

LEGISLATIVE RESEARCH COMMISSION

Land Title Registration



REPORT TO THE
1998 SESSION OF THE
1997 GENERAL ASSEMBLY
OF NORTH CAROLINA

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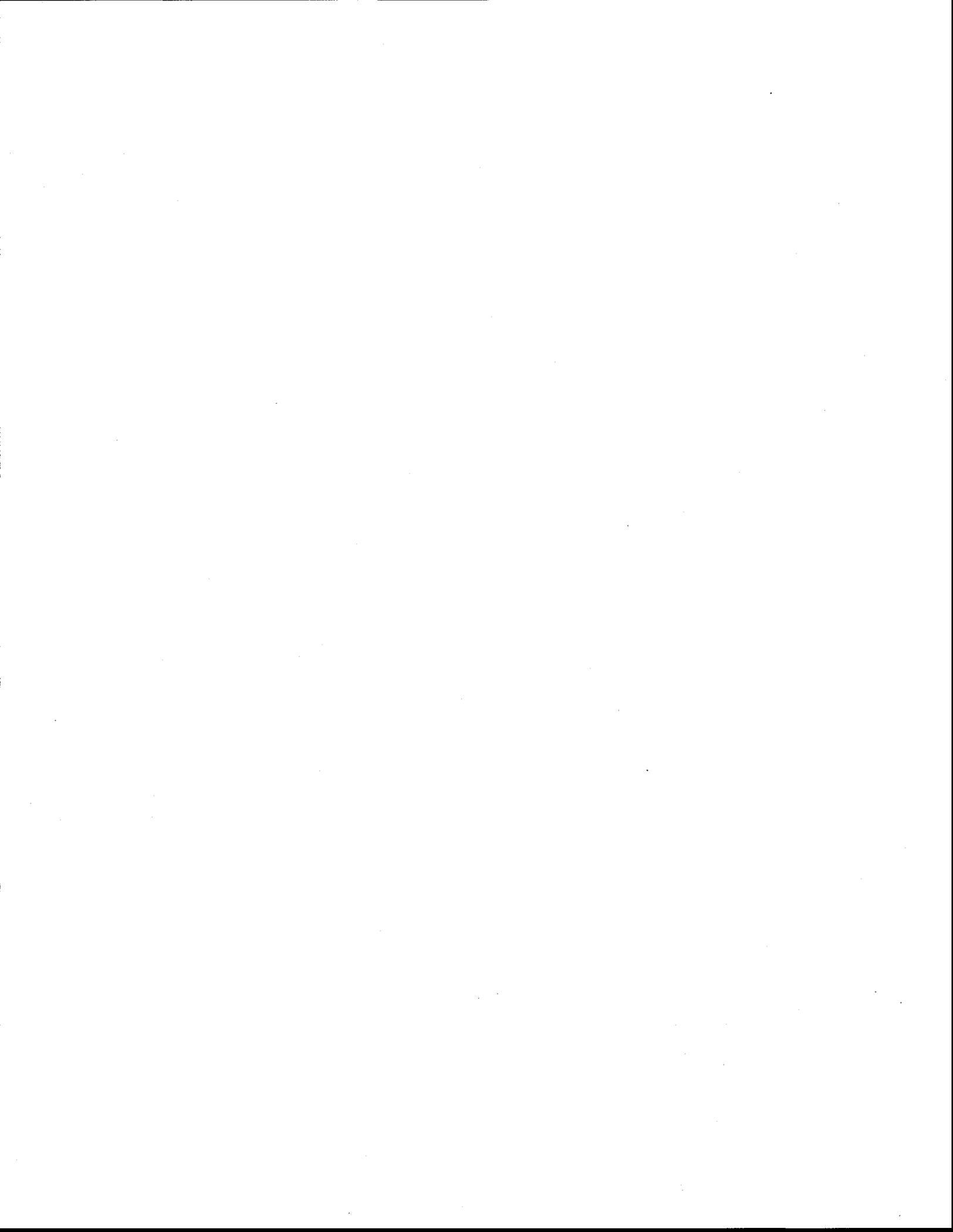
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096

May 11, 1998

TO THE MEMBERS OF THE 1997 GENERAL ASSEMBLY (REGULAR SESSION 1998):

The Legislative Research Commission herewith submits to you for your consideration its final report on Land Title Registration. The report was prepared by the Legislative Research Commission's Committee on Land Title Registration pursuant to G.S. 120-30.17(1).

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold J. Brubaker", written over a horizontal line.

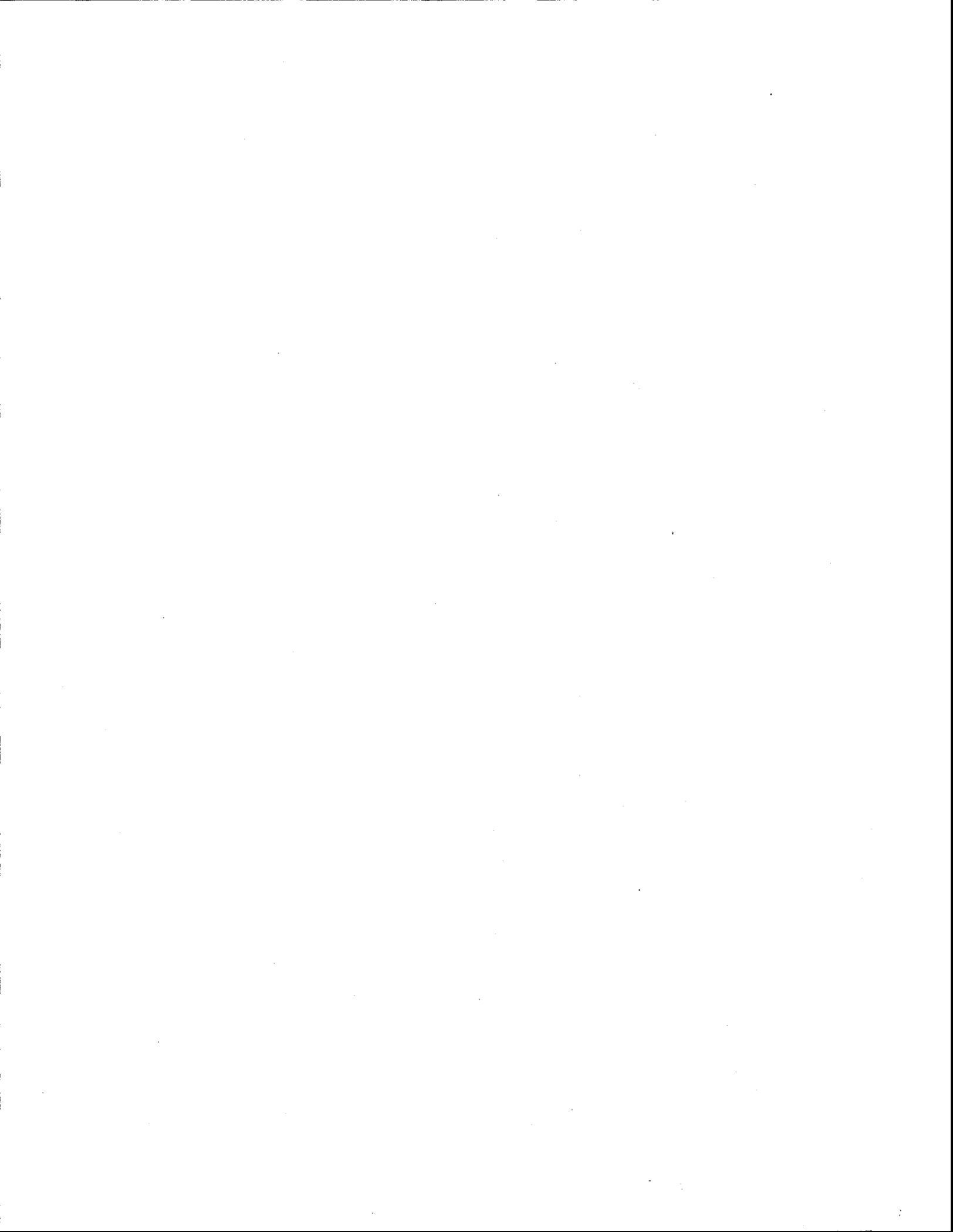
Harold J. Brubaker
Speaker of the House

A handwritten signature in cursive script, appearing to read "Marc Basnight", written over a horizontal line.

Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission





1997-1999

LEGISLATIVE RESEARCH COMMISSION

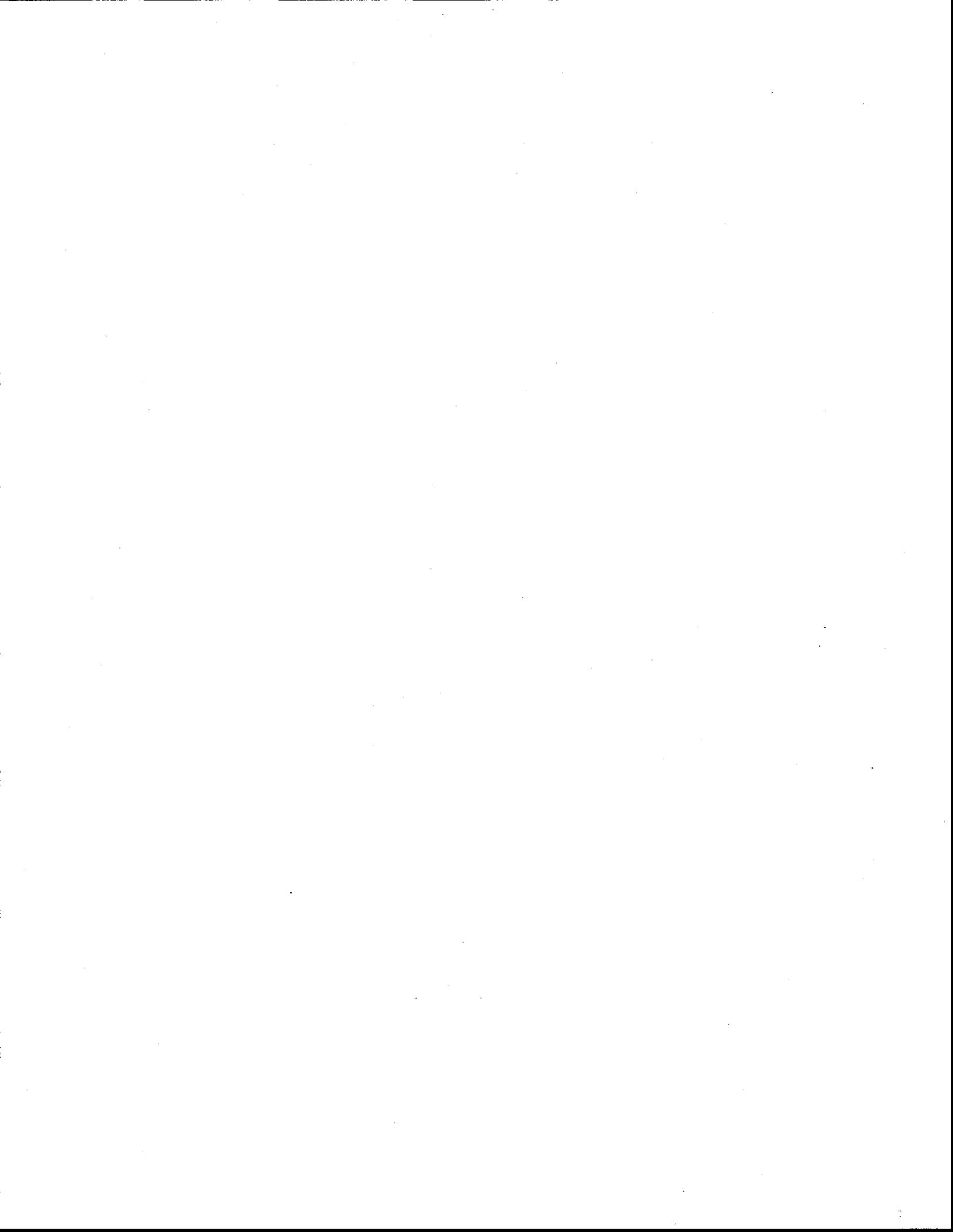
MEMBERSHIP

President Pro Tempore of the Senate
Marc Basnight, Cochair

Speaker of the House of Representatives
Harold J. Brubaker, Cochair

Sen. Austin M. Allran
Sen. Frank W. Ballance, Jr.
Sen. Jeanne H. Lucas
Sen. R.L. Martin
Sen. Ed N. Warren

Rep. Michael P. Decker, Sr.
Rep. Jerry C. Dockham
Rep. Beverly Earle
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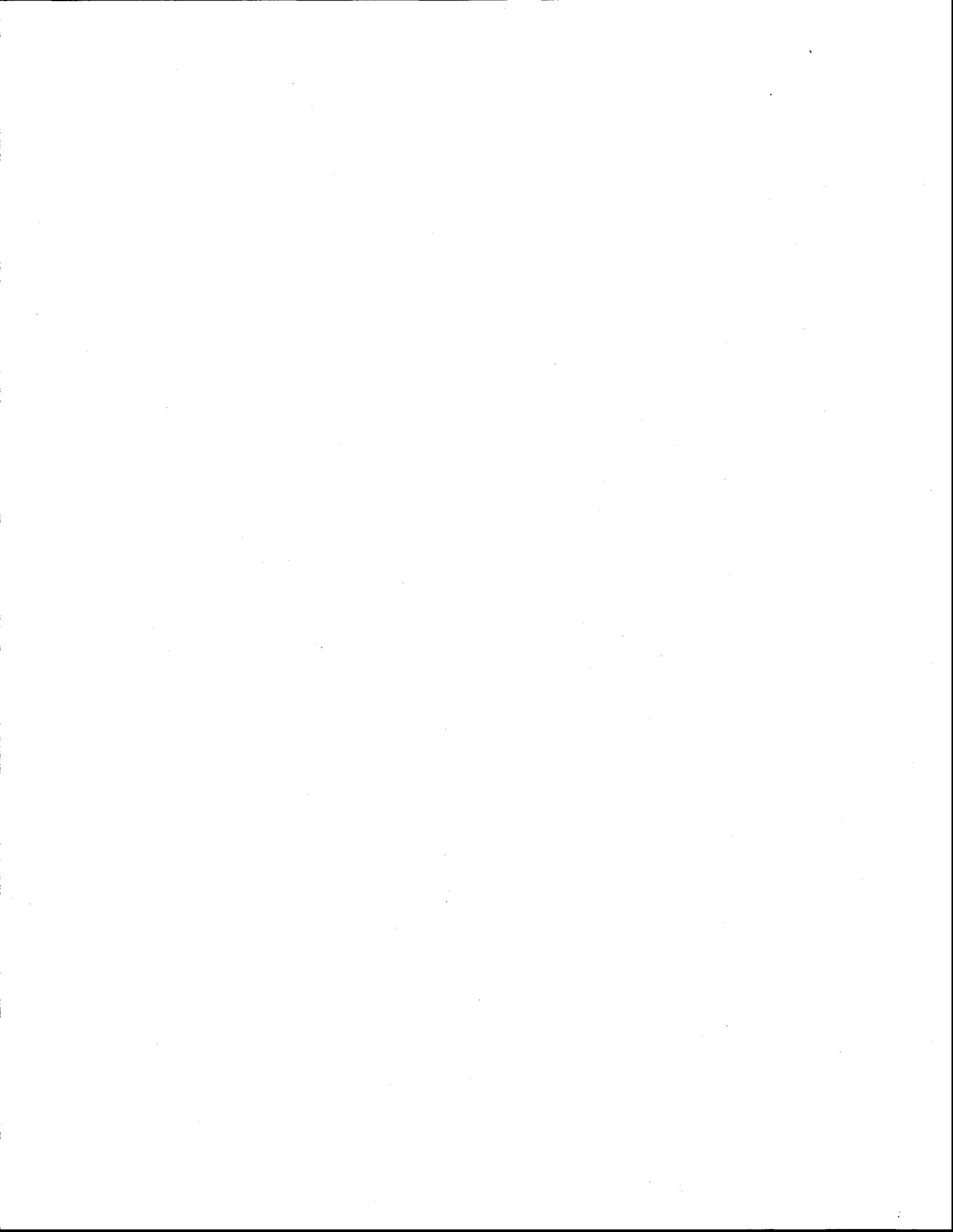


PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1997 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Land Title Registration was authorized by Section 14 of Chapter 309 of the 1997 Session Laws. The relevant portions of Chapter 309 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Insurance, Property and Annexation Grouping area under the direction of Representative Jerry C. Dockham. The Committee was chaired by Senator Austin M. Allran and Representative C. Robert Brawley. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



COMMITTEE PROCEEDINGS

Meeting on January 13, 1998

The first meeting of the LRC Land Title Registration Committee was held Tuesday, January 13, 1998 at 9:00 a.m. in Room 415 of the Legislative Office Building. The Committee first heard from Ms. Elaine Davis, Register of Deeds in Washington County, and Mr. Authur "Bud" Cockrell, attorney from Washington County. Mr. Cockrell explained that "Torrens" is an alternate system of land title registration named after Sir Robert Torrens of South Australia, who is credited with drafting the first land title registration law in 1858. He further explained that the "Torrens" method, as authorized since 1913 by Chapter 43 of the North Carolina General Statutes, allows a person to establish title by a judicial proceeding that produces an official certificate of ownership by judicial decree. This certificate, he explained, is then registered, and is considered conclusive evidence of title. Mr. Cockrell pointed out that although this procedure is available statewide, it is apparently been used only sporadically as a method of title registration, mainly in the eastern counties of the State.

Ms. Davis mentioned several changes need to the Torrens statutes, including revising antiquated language, revising fees, and updating indexing procedures.

The Committee requested that all interested parties bring proposals to the next meeting, for committee review and discussion.

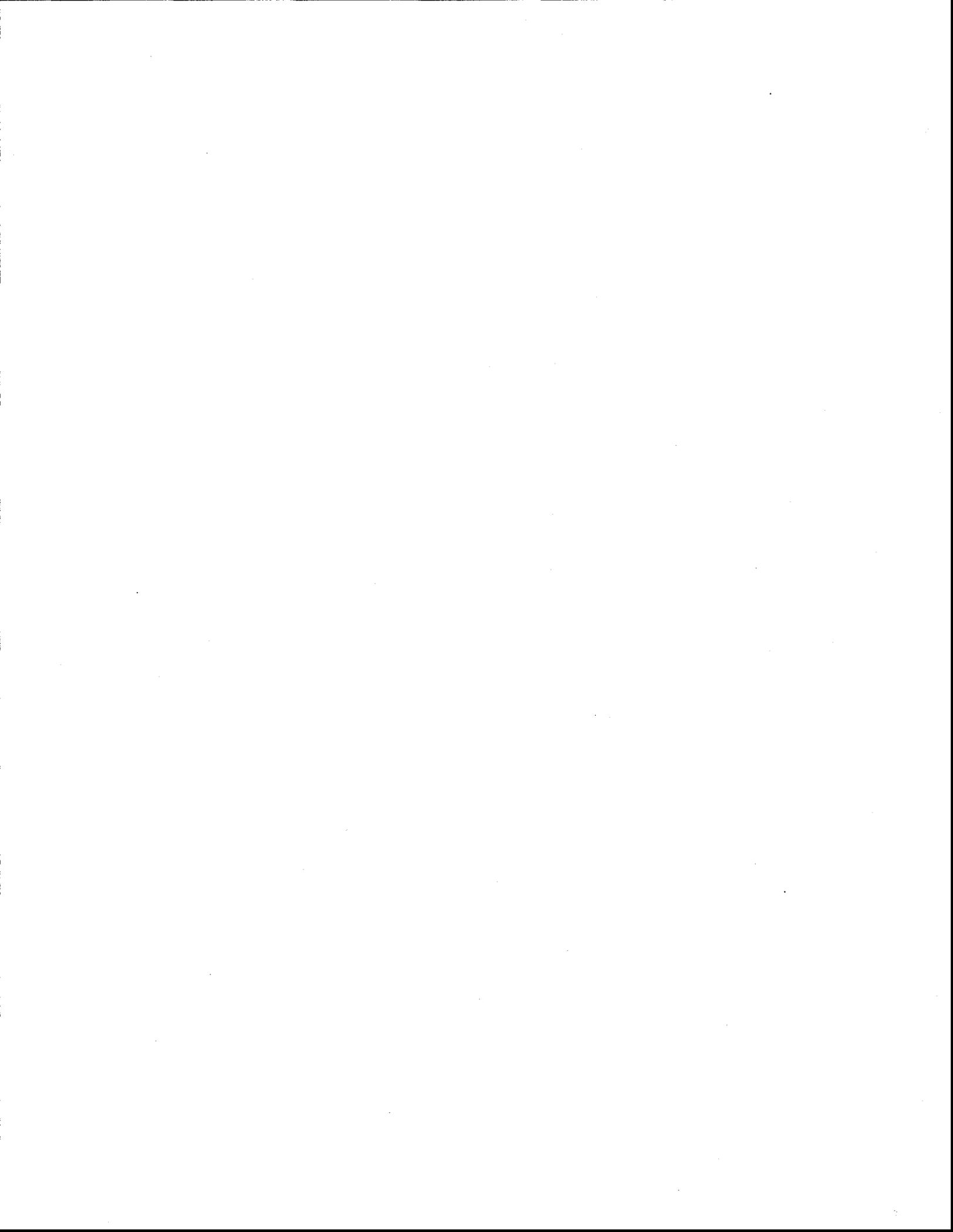


Meeting on February 10, 1998

The second meeting of the LRC Land Title Registration Committee was held Tuesday, February 10, 1998 in Room 415 of the Legislative Office Building. Bill Campbell of the Institute of Government presented a draft revision to Chapter 43 of the General Statutes (Torrens Land Title Registration), the result of a working group composed of many of the parties interested in Torrens changes. The draft he presented consisted primarily of changes to update the fee and recording provisions of the Torrens statutes, and to delete archaic provisions. Following discussion, the Committee directed staff to revise the bill as instructed, for approval at the next meeting.

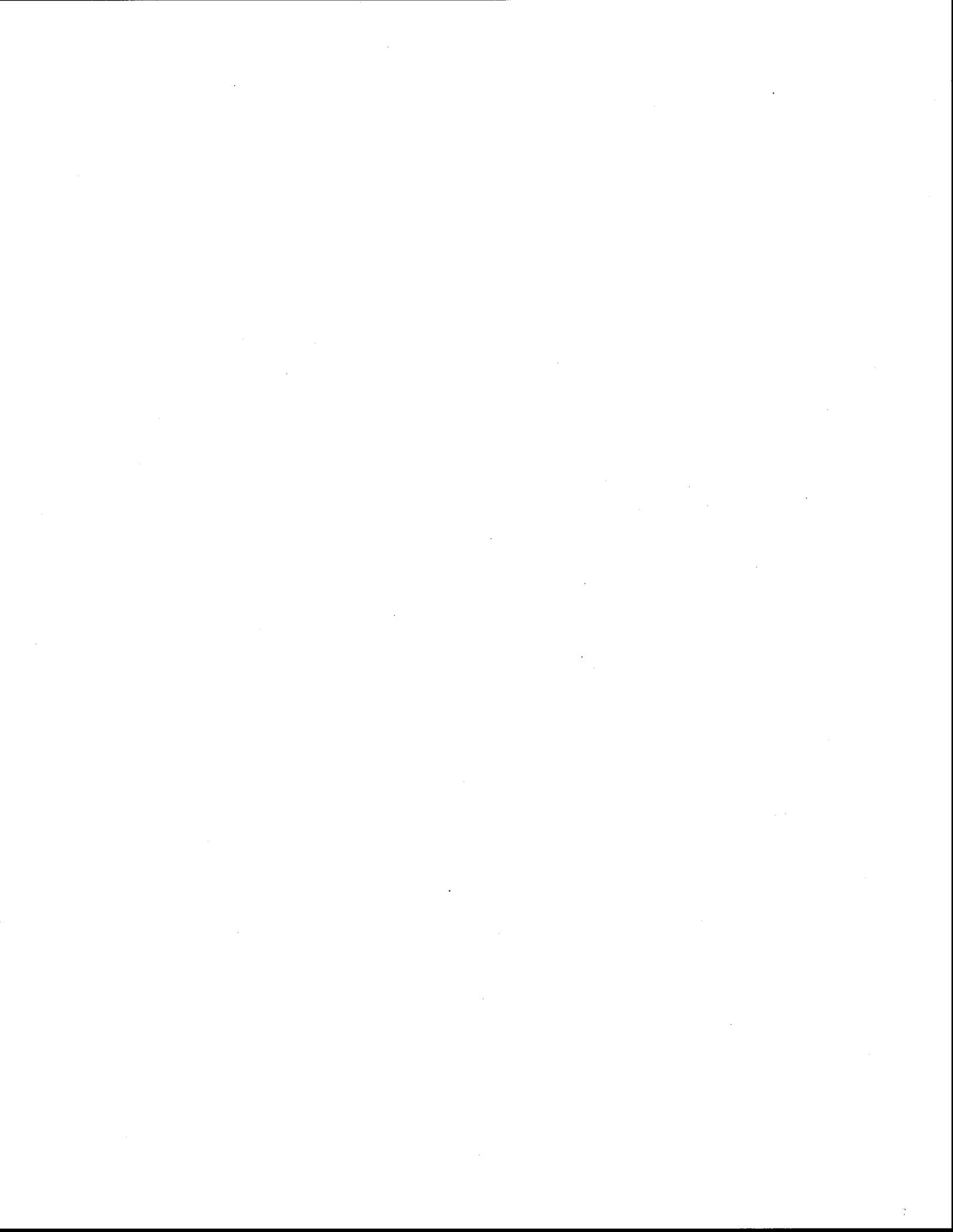
Meeting on March 3, 1998

The third and final meeting of the LRC Land Title Registration Committee was held Tuesday March 3, 1998 in Room 414 of the Legislative Office Building. The committee reviewed and approved the legislation included in Appendix D as their report the 1998 Regular Session of the General Assembly.



FINDINGS AND RECOMMENDATIONS

The Committee finds that the North Carolina Land Title Registration (Torrens) laws, contained in Chapter 43 of the North Carolina General Statutes, require updating and revision. The Committee recommends the legislation contained in Appendix D to accomplish these revisions. A full explanation of the proposed changes to Chapter 43 is included in Appendix D.



APPENDIX A

**GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION**

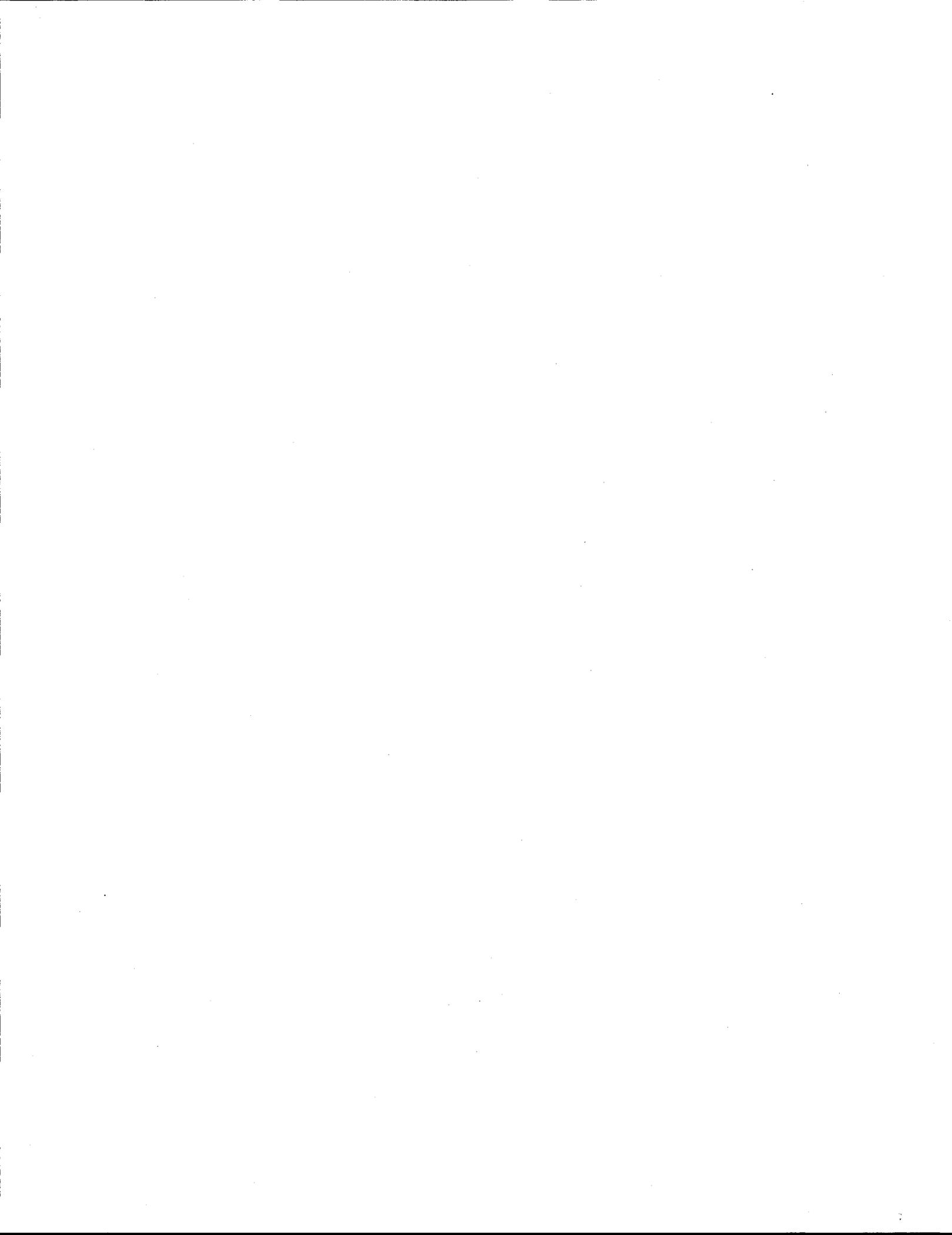
**S.L. 1997-309
SENATE BILL 875
(in part)**

**AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND
PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF CERTAIN
BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A STUDY OF
LAND TITLE REGISTRATION PROCEDURES.**

.....

Section 14. The Legislative Research Commission may study the procedures for land title registration pursuant to Chapter 43 of the General Statutes and make recommendations regarding revisions to the procedures to improve them. The Commission shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

.....



APPENDIX B

LEGISLATIVE RESEARCH COMMISSION LAND TITLE REGISTRATION PROCEDURES COMMITTEE 1997-1999

Pro Tem's Appointments

Sen. Austin M. Allran, Cochair
PO Box 2907
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Mr. Richard O. Gamble
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Ms. Carol Warren
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Ms. Carter Worthy
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LRC Member

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Rep. Michael P. Decker, Sr.
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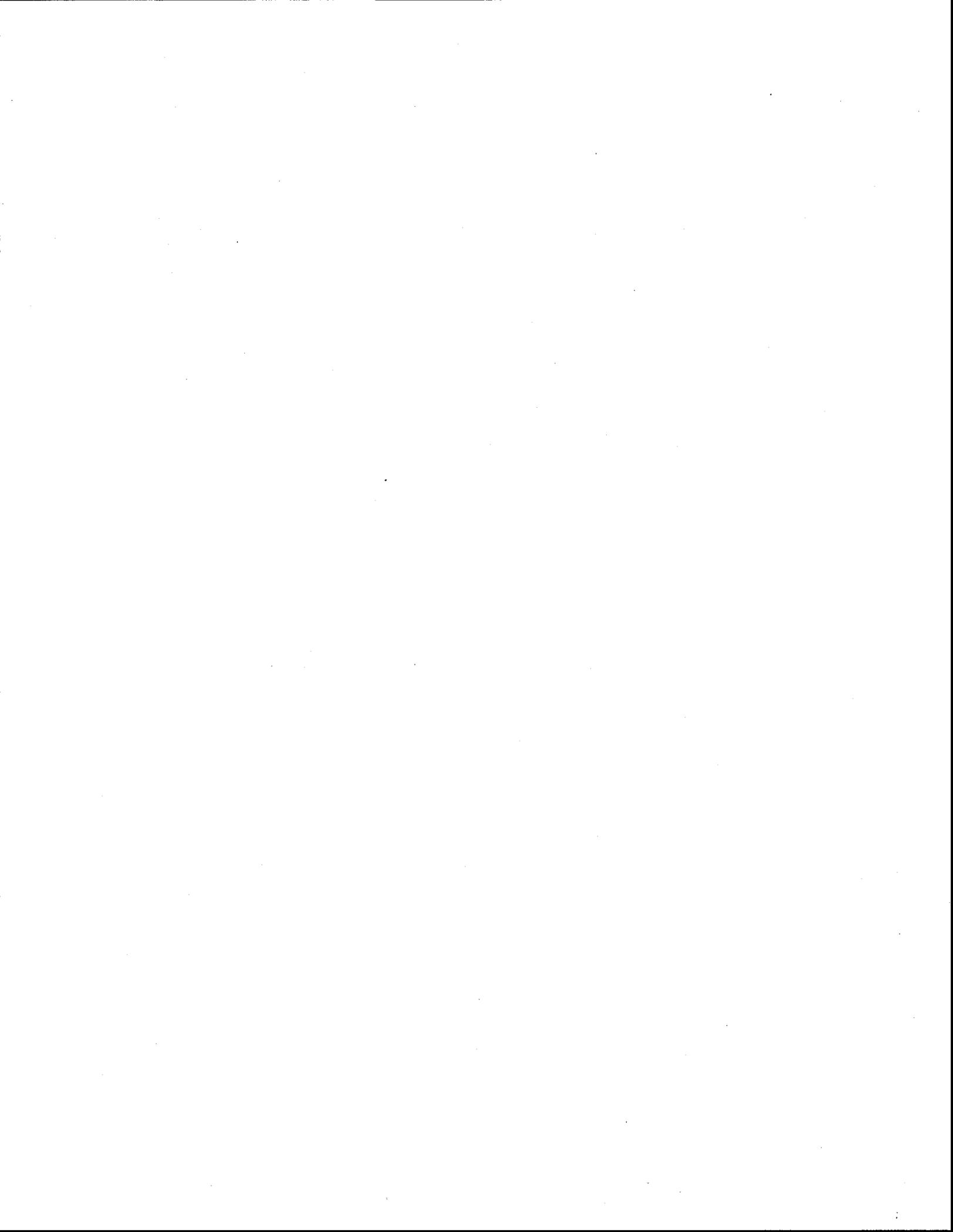
Rep. G. Wayne Goodwin
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(910) 997-5558

Rep. P. Wayne Sexton, Sr.
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(910) 627-1418

Rep. Douglas Y. Yongue
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(910) 276-1727

Clerk:

Bonnie Trivette
(919) 733-5931



APPENDIX C

§ 43-1

CH. 43. LAND REGISTRATION

§ 43-1

Sec.

- 43-40. Production of owner's certificate required.
- 43-41. Registration notice to all persons.
- 43-42. Conveyance of registered land in trust.
- 43-43. Authorized transfer of equitable interests registered.
- 43-44. Validating conveyance by entry on margin of certificate.

Article 7.

Liens upon Registered Lands.

- 43-45. Docketed judgments.
- 43-46. Notice of delinquent taxes filed.
- 43-47. Sale of land for taxes; redemption.
- 43-48. Sale of unredeemed land; application of proceeds.

Article 8.

Assurance Fund.

- 43-49. Assurance fund provided; investment.
- 43-50. Action for indemnity.
- 43-51. Satisfaction by third person or by Treasurer.
- 43-52. Payment by Treasurer, if assurance fund insufficient.

Sec.

- 43-53. Treasurer subrogated to right of claimant.
- 43-54. Assurance fund not liable for breach of trust; limit of recovery.
- 43-55. Statute of limitation as to assurance fund.

Article 9.

Removal of Land from Operation of Torrens Law.

- 43-56. Proceedings.
- 43-57. Existing liens unaffected.
- 43-58 to 43-62. [Reserved.]

Article 10.

Instruments Describing Party as Trustee or Agent.

- 43-63. When instrument describing party as trustee or agent not to operate as notice of limitation upon powers of such party.
- 43-64. Application of Article; filing notice of claim; application of § 47B-6.

ARTICLE 1.

Nature of Proceeding.

§ 43-1. Jurisdiction in superior court.

For the purpose of enabling all persons owning real estate within this State to have the title thereto settled and registered, as prescribed by the provisions of this Chapter, the superior court of the county in which the land lies in the State shall have exclusive original jurisdiction of all petitions and proceedings had thereupon, under the rules of practice and procedure prescribed for special proceedings except as herein otherwise provided. (1913, c. 90, s. 1; C.S., s. 2377.)

Editor's Note. — This chapter is known generally as the Torrens Law. The principle of the "Torrens System" is conveyance by registration and certificate instead of by deed, and assimilates the transfer of land to the transfer of stocks in corporations.

Legal Periodicals. — For a discussion of the history and development of

the law of this chapter, see *Cape Lookout Co. v. Gold*, 167 N.C. 63, 83 S.E. 3 (1914), 10 N.C.L. Rev. 329.

For article, "Future Advances and Title Insurance Coverage," see 15 *Wake Forest L. Rev.* 329 (1979).

For survey of 1979 property law, see 58 *N.C.L. Rev.* 1509 (1980).

Chapter to Be Liberally Construed.

— This statute is of a remedial character, and should be liberally construed according to its intent. *Cape Lookout Co. v. Gold*, 167 N.C. 63, 83 S.E. 3 (1914); *Dillon v. Brocker*, 178 N.C. 65, 100 S.E. 191 (1919); *Perry v. Morgan*, 219 N.C. 377, 14 S.E.2d 46 (1941).

The Torrens Act manifests a purpose on the part of the General Assembly to establish a title in the registered owner, impregnable against attack at the time of the decree, and also to protect him against all claims or demands not noted on the book for the registration of titles, and to make that book a complete record and the only conclusive evidence of the title. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

The basic principle of this system is the registration of the official and conclusive evidence of the title of land, instead of registering, as the old system requires, the wholly private and inconclusive evidences of such title. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

The principle of the "Torrens System" is conveyance by registration and certificate instead of by deed, and assimilates the transfer of land to the transfer of stocks in corporations. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

The purpose of a proceeding under the Torrens Law is to remove clouds from title and resolve controversies with regard thereto, not to validate title to lands which under the law of the State, which everyone is presumed to know, are not subject to private ownership. *Swan Island Club v. Yarbrough*, 209 F.2d 698 (4th Cir. 1954).

The general purpose of the Torrens System is to secure by a decree of court, or other similar proceedings, a title impregnable against attack; to make a permanent and complete record of the exact status of the title, with the certificate of registration showing at a glance all liens, encumbrances, and claims

against the title; and to protect the registered owner against all claims or demands not noted on the book for the registration of titles. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

The judge of the superior court is given authority over the whole proceedings before the clerk, and may require reformation of the process, pleadings or decrees or entries, and therefore he has authority to allow parties defendant to be made and to enlarge the time within which answers may be filed. *Empire Mfg. Co. v. Spruill*, 169 N.C. 618, 86 S.E. 522 (1915).

Registered land is subject to the jurisdiction of the courts, except as otherwise specially provided in this chapter, in the same manner as if not so registered. *Harrison v. Darden*, 223 N.C. 364, 26 S.E.2d 860 (1943).

Determining Value of Improvements. — There is nothing in this chapter, known as the Torrens Law, which prevents the courts from proceeding to determine the value of improvements claimed by defendants who have been evicted under plaintiff's superior title, in accordance with the terms of an unassailed judgment to which plaintiff was a party, and ascertained by a consent reference. *Harrison v. Darden*, 223 N.C. 364, 26 S.E.2d 860 (1943).

Court Has No Jurisdiction to Render Judgment Affecting Title to Lands under Navigable Waters. — In a Torrens proceeding the court is without jurisdiction to render any judgment affecting title to land covered by navigable waters, and with respect to such lands such a decree is a nullity, and is subject to collateral attack, although it may be valid with respect to other lands therein embraced. *Swan Island Club v. Yarbrough*, 209 F.2d 698 (4th Cir. 1954).

Cited in *National Bank v. Greensboro Motor Co.*, 264 N.C. 568, 142 S.E.2d 166 (1965); *International Serv. Ins. Co. v. Iowa Nat'l Mut. Ins. Co.*, 276 N.C. 243, 172 S.E.2d 55 (1970).

§ 43-2. Proceedings in rem; vests title.

The proceedings under any petition for the registration of land, and all proceedings in the court in relation to registered land, shall be proceedings in rem against the land, and the decrees of the court shall operate directly on the land, and vest and establish title thereto in accordance with the provisions of this Chapter. (1913, c. 90, s. 2; C.S., s. 2378.)

CASE NOTES

Proceeding Is in Rem. — A proceeding under the Torrens Law is a proceeding in rem. *Davis v. Morgan*, 228 N.C. 78, 44 S.E.2d 593 (1947).

Consolidation of Proceedings. — A proceeding for the purpose of registering title and an injunction to prevent tres-

pass, involving the same land and the same parties, may be consolidated. *Blount v. Sawyer*, 189 N.C. 210, 126 S.E. 512 (1925).

Cited in *Brinson v. Lacy*, 195 N.C. 394, 142 S.E. 317 (1928).

§ 43-3. Rules of practice prescribed by Attorney General.

The Attorney General, with the approval of the Supreme Court, shall from time to time make, change, revise and revoke rules of practice in the superior court for the administration of this Chapter. He shall in like manner prescribe forms for use in such court, and in the notation of the registry of titles of memorials, claims, liens, lis pendens, and all other involuntary charges upon and to such registered lands. Whenever a question shall arise in the administration of this Chapter as to the proper method of protecting or asserting any right or interest under the law, and the method of procedure is in doubt, it shall be the duty of the clerk or register of deeds to notify the Attorney General, who, with the approval of the Supreme Court, shall prescribe a rule covering such case. (1913, c. 90, s. 31; C.S., s. 2379.)

CASE NOTES

Cited in *Harrison v. Darden*, 223 N.C. 364, 26 S.E.2d 860 (1943).

ARTICLE 2.

Officers and Fees.

§ 43-4. Examiners appointed by clerk.

The clerk of the superior court of each county shall appoint three or more examiners of titles, who shall be licensed attorneys-at-law, residing in the State of North Carolina. They shall qualify by taking oath before the clerk to faithfully discharge the duties of such office, which oath shall be filed in the office of the clerk. The term of office shall be two years. Examiners of titles shall have and exercise the jurisdiction and perform the duties hereinafter prescribed, and receive the fees herein provided. They shall not appear in or have any connection with any proceeding instituted under the provisions of this Chapter, and they shall be subject to removal at will by such clerk or judge of the superior court. (1913, c. 90, s. 3; 1917, c. 63; C.S., s. 2380.)

The examiner hereinbefore provided for shall receive, as may be allowed by the clerk, a minimum fee of five dollars (\$5.00) for such examination of each title of property assessed upon the tax books at the amount of five thousand dollars (\$5,000) or less; for each additional thousand dollars (\$1,000) of assessed value of property so examined he shall receive fifty cents (50¢); for examination outside of the county he shall receive a reasonable allowance. There shall be allowed to the register of deeds for copying the plot upon registration of titles book two dollars (\$2.00) for the first page and one dollar (\$1.00) for each succeeding page; for copying or recording new certificates under this Chapter, two dollars (\$2.00) for the first page and one dollar (\$1.00) for each succeeding page; for issuing the certificate and new certificates under this Chapter, fifty cents (50¢) for each; for noting the entries or memorandum required and for the entries noting the cancellation of mortgages and all other entries, if any, herein provided for, fifty cents (50¢) for each entry. The county or other surveyor employed under the provisions of this Chapter shall not be allowed to charge more than forty cents (40¢) per hour for his time actually employed in making the survey and the map, except by agreement with the petitioner, but he shall be allowed a minimum fee of two dollars (\$2.00).

There shall be no other fees allowed of any nature except as herein provided, and the bond of the register, clerk and sheriff shall be liable in case of any mistake, malfeasance, or misfeasance as to the duties imposed upon them by this Chapter in as full a manner as such bond is now liable by law. (1913, c. 90, s. 30; C.S., s. 2381; 1971, c. 1185, s. 1; 1977, c. 774.)

ARTICLE 3.

Procedure for Registration.

§ 43-6. Who may institute proceedings.

Any person, firm, or corporation, including the State of North Carolina or any political subdivision thereof, being in the peaceable possession of land within the State and claiming an estate of inheritance therein, may prosecute a special proceeding in rem against all the world in the superior court for the county in which such land is situate, to establish his title thereto, to determine all adverse claims and have the title registered. Any number of the separate parcels of land claimed by the petitioner may be included in the same proceeding, and any one parcel may be established in several parts, each of which shall be clearly and accurately described and registered separately, and the decree therein shall operate directly upon the land and establish and vest an indefeasible title thereto. Any person in like possession of lands within the State, claiming an interest or estate less than the fee therein, may have his title thereto established under the provisions of this Chapter, without the registration and transfer features herein provided. (1913, c. 90, s. 74; C.S., s. 2382; 1963, c. 946, s. 1.)

CASE NOTES

Applied in Taylor v. Johnston, 289 126, 179 S.E.2d 371 (1971).
 N.C. 690, 224 S.E.2d 567 (1976). Cited in Brinson v. Lacy, 195 N.C.
 Quoted in State v. Johnson, 278 N.C. 394, 142 S.E. 317 (1928).

§ 43-7. Land lying in two or more counties.

In every proceeding to register title, in which it is alleged in the petition or made to appear that the land therein described, whether in one or more parcels, is situated partly in one county and partly in another, or is situated in two or more counties, that is to say, when an entire tract, or two or more entire tracts, are situated in two or more counties (but not separate or several tracts in different counties) it shall be competent to institute the proceedings before the clerk of the superior court of any county in which any part of such tract lying in two or more counties is situated, and said clerk shall have jurisdiction both of the parties and of the subject matter as fully as if said land was situated wholly in his county; but upon the entry of a final decree of registration of title, the clerk by or before whom the same was rendered shall certify a copy thereof to the register of deeds of every county in which said land or any part thereof is situated, and the same shall be there filed and recorded; and every such register of deeds, upon demand of the person entitled and payment of requisite fees therefor, shall issue and deliver a certificate of title for that part of said land situated in his county. This section shall apply and become effective in all cases or proceedings heretofore conducted before any clerk of the superior court of this State for registration of title, as in this Chapter authorized, when the land described in the petition as an entire tract was situated in two or more counties, as aforesaid; and upon the filing and recording of a certified copy of the final decree or decree of registration therein, the register of deeds shall issue and deliver a certificate of title to the present owner or person entitled to the same, for that part of the land situated in his county, as aforesaid, upon payment or tender of proper fees therefor. (1919, c. 82, s. 1; C.S., s. 2383.)

§ 43-8. Petition filed; contents; State to be named as respondent; service on State.

Suit for registration of title shall be begun by a petition to the court by the persons claiming, singly or collectively, to own or have the power of appointing or disposing of an estate in fee simple in any land, whether subject to liens or not. Infants and other persons under disability may sue by guardian or trustee, as the case may be, and corporations as in other cases now provided by law; but the person in whose behalf the petition is made shall always be named as petitioner. The petition shall be signed and sworn to by each petitioner, and shall contain a full description of the land to be registered as hereinafter provided, together with a plot of same by metes and bounds, corners to be marked by permanent markers of iron, stone or cement; it shall show when, how and from whom it was acquired, and whether or not it is now occupied, and if so, by whom; and it shall give an account of all known liens, interests, equities and claims, adverse or otherwise, vested or contingent, upon such land. Full names and addresses, if known, of all persons who may be

metes and bounds, the clerk may order a preliminary survey.

Except when the State of North Carolina is the petitioner, all special proceedings filed pursuant to this Article shall name the State of North Carolina as a respondent to the action. Service of process upon the State shall be made in accordance with G.S. 1A-1, Rule 4(j)(3). (1913, c. 90, s. 5; C.S., s. 2384; 1979, c. 73, s. 1.)

CASE NOTES

Attack on Proceedings Because Clerk Did Not Sign Jurat. — Where petitioner seeking to have his title to land registered under the provisions of the Torrens Law signed an oath reciting that he had been duly sworn, he could not contend that the oath lacked validity on grounds that the clerk of the court had not signed the jurat, and that in conse-

quence the proceedings which followed were absolutely void, and thereafter, upon his own motion, have such proceedings set aside. *Morgan v. Beaufort & W.R.R.*, 197 N.C. 568, 150 S.E. 30 (1929).

Stated in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

Cited in *Brinson v. Lacy*, 195 N.C. 394, 142 S.E. 317 (1928).

§ 43-9. Summons issued and served; disclaimer.

Summons shall be issued and shall be returnable as in other cases of special proceedings, except that the return shall be at least 60 days from the date of the summons. The summons shall be served at least 10 days before the return thereof and the return recorded in the same manner as in other special proceedings; and all parties under disabilities shall be represented by guardian, either general or ad litem. If the persons named as interested are not residents of the State of North Carolina, and their residence is known, which must appear by affidavit, the summons must be served on such nonresidents as is now prescribed by law for service of summons on nonresidents.

Any party defendant to such proceeding may file a disclaimer of any claim or interest in the land described in the petition, which shall be deemed an admission of the allegations of the petition, and the decree shall bar such party and all persons thereafter claiming under him, and such party shall not be liable for any costs or expenses of the proceeding except such as may have been incurred by reason of his delay in pleading. (1913, c. 90, s. 6; C.S., s. 2385; 1967, c. 954, s. 3.)

CASE NOTES

Stated in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

Cited in *Cape Lookout Co. v. Gold*, 167 N.C. 63, 83 S.E. 3 (1914).

§ 43-10. Notice of petition published.

In addition to the summons issued, prescribed in the foregoing section [§ 43-9], the clerk of the court shall, at the time of issuing such summons, publish a notice of the filing thereof containing the names of the petitioners, the names of all persons named in the petition, together with a short but accurate description of the land and the relief demanded, in some secular newspaper published in the county wherein the land is situate, and having general circulation in the county; and if there be no such paper, then in a newspaper in the county nearest thereto and having general circulation in the county wherein the land lies, once a week for eight issues of such paper. The notice shall set forth the title of the cause and in legible or conspicuous type the words "To whom it may concern," and shall give notice to all persons of the relief demanded and the return day of the summons: Provided, that no final order or judgment shall be entered in the cause until there is proof and adjudication of publication as in other cases of publication of notice of summons. The provisions of this section, in respect to the issuing and service of summons and the publication of the notice, shall be mandatory and essential to the jurisdiction of the court to proceed in the cause: Provided, that the recital of the service of summons and publication in the decree or in the final judgment in the cause, and in the certificate issued to the petitioner as hereinafter provided, shall be conclusive evidence thereof. The clerk of the court shall also record a copy of said notice in the lis pendens docket of his office and cross-index same as other notices of lis pendens and shall also certify a copy thereof to the superior court of each county in which any part of said land lies, and the clerk thereof shall record and cross-index same in the lis pendens records of his office as other notices of lis pendens are recorded and cross-indexed. (1913, c. 90, s. 7; 1915, c. 128, s. 1; 1919, c. 82, s. 2; C.S., s. 2386; 1925, c. 287.)

Legal Periodicals. — For survey of 1979 property law, see 58 N.C.L. Rev. 1509 (1980).

CASE NOTES

Sufficiency of Short Form of Description. — Where notice is required to contain a short form of description of the property, it is sufficient if it clearly calls the attention of adjoining owners or others who might be interested to the particular property intended, and it need not contain all the elements of a full description. *Richmond Cedar Works v. Farmers Mfg. Co.*, 41 N.C. App. 233, 254 S.E.2d 673 (1979).

Reference to County Public Registry for Description Held Insufficient. — Where a notice published in a county newspaper under this section simply stated where in the county public registry a description of the land in question could be found, the notice by

publication was inadequate to give the notice required by statute. *Richmond Cedar Works v. Farmers Mfg. Co.*, 41 N.C. App. 233, 254 S.E.2d 673 (1979).

Sufficiency of Publication. — Where the summons in proceedings to register lands has been issued and served under the provisions of § 43-9, it is not necessary to the validity of the proceedings that the publication of notice of filing should have been made on exactly the day the summons was issued, if the publication has been made in the designated paper once a week for eight successive weeks as directed by this section. *Cape Lookout Co. v. Gold*, 167 N.C. 63, 83 S.E. 3 (1914).

Conclusive Evidence of Pub-

"publication of notice has been duly made" is conclusive evidence of the fact, and any attack on the decree is foreclosed by the limitation imposed in § 43-26. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

When viewed in light of the purpose of the Torrens Act, it is clear that the proviso that recital of service of summons and publication in the decree and the certificate shall be conclusive evidence thereof is intended to cure any jurisdictional defect with respect to issuance and service of summons and the publication

Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

Waiver of Objection to Publication. — In proceedings to register a title to lands, a party claiming an interest in the lands waives his right to object on the grounds of irregularity in the publication of notice by appearing and answering the petition. *Cape Lookout Co. v. Gold*, 167 N.C. 63, 83 S.E. 3 (1914).

Cited in *Brinson v. Lacy*, 195 N.C. 394, 142 S.E. 317 (1928); *Taylor v. Johnston*, 289 N.C. 690, 224 S.E.2d 567 (1976).

§ 43-11. Hearing and decree.

(a) **Referred to Examiner.** — Upon the return day of the summons the petition shall be set down for hearing upon the pleadings and exhibits filed. If any person claiming an interest in the land described in the petition, or any lien thereon, shall file an answer, the petition and answer, together with all exhibits filed, shall be referred to the examiner of titles, who shall proceed, after notice to the petitioner and the persons who have filed answer or answered, to hear the cause upon such parol or documentary evidence as may be offered or called for and taken by him, and in addition thereto make such independent examination of the title as may be necessary. Upon his request the clerk shall issue a commission under the seal of the court for taking such testimony as shall be beyond the jurisdiction of such examiner.

(b) **Examiner's Report.** — The examiner shall, within 30 days after such hearing, unless for good cause the time shall be extended, file with the clerk a report of his conclusions of law and fact, setting forth the state of such title, any liens or encumbrances thereon, by whom held, amount due thereon, together with an abstract of title to the lands and any other information in regard thereto affecting its validity.

(c) **Exceptions to Report.** — Any of the parties to the proceeding may, within 20 days after such report is filed, file exceptions, either to the conclusions of law or fact. Whereupon the clerk shall transmit the record to the judge of the superior court for his determination thereof; such judge may on his own motion certify any issue of fact arising upon any such exceptions to the superior court of the county in which the proceeding is pending, for a trial of such issue by jury, and he shall so certify such issue of fact for trial by jury upon the demand of any party to the proceeding. If, upon consideration of such record, or the record and verdict of issues to be certified and tried by jury, the title be found in the petitioner, the judge shall enter a decree to that effect, ascertaining all limitations, liens, etc., declaring the land entitled to registration accordingly, and the same, together with the record, shall be docketed by the clerk of the court as in other cases, and a copy of the decree certified to the register of deeds of the county for registration as hereinafter provided. Any of the parties may appeal from such judgment to the appellate division, as in other special proceedings.

(d) No Judgment by Default. — No judgment in any proceeding under this Chapter shall be given by default, but the court must require an examination of the title in every instance except as respects the rights of parties who, by proper pleadings, admit the petitioner's claim. If, upon the return day of the summons and the day upon which the petition is set down for hearing, no answer be filed, the clerk shall refer the same to the examiner of titles, who shall, after notice to the petitioner, proceed to examine the title, together with all liens or encumbrances set forth or referred to in the petition and exhibits, and shall examine the registry of deeds, mortgages, wills, judgments, mechanic liens and other records of the county, and upon such examination he shall, as hereinbefore provided, report to the clerk the condition of the title, with a notice of liens or encumbrances thereon. The examiner shall have power to take and call for evidence in such case as fully as if the application were being contested. If the title shall be found to be in the petitioner, the clerk shall enter a decree to that effect and declaring the land entitled to registration, with entry of any limitations, liens, etc., and shall certify the same for registration, as hereinbefore provided, after approval by the judge of the superior court. (1913, c. 90, s. 8; C.S., s. 2387; 1969, c. 44, s. 48.)

Legal Periodicals. — For article, "Transferring North Carolina Real Estate Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

CASE NOTES

Subsection (c) requires the trial judge to certify issues of fact for trial by jury upon demand of any party. *Wilkinson v. Weyerhaeuser Corp.*, — N.C. App. —, 312 S.E.2d 531 (1984).

Proof of Title in Contested Proceedings. — Contested proceedings for the registration of land titles under the Torrens Law are triable in the mode prescribed by this section, under the same rules for proving title as apply in actions of ejectment and other actions involving the establishment of land titles. *West Virginia Pulp & Paper Co. v. Richmond Cedar Works*, 239 N.C. 627, 80 S.E.2d 665 (1954); *Taylor v. Johnston*, 289 N.C. 690, 224 S.E.2d 567 (1976); *Richmond Cedar Works v. Farmers Mfg. Co.*, 41

N.C. App. 233, 254 S.E.2d 673 (1979).

Evidence Sufficient for Jury. — Defendants' evidence of claim under a prior State grant and parol evidence in explanation of a latent ambiguity as to the location of the land embraced in the grant was sufficient to raise an issue of fact as to the location of the land claimed by defendants for the determination of the jury, and defendants' exception to the refusal of the court to submit an issue to the jury as to whether petitioners were the owners of the land and entitled to have title thereto registered was properly sustained. *Perry v. Morgan*, 219 N.C. 377, 14 S.E.2d 46 (1941).

Stated in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-12. Effect of decree; approval of judge.

Every decree rendered as hereinbefore provided shall bind the land and bar all persons and corporations claiming title thereto or interest therein; quiet the title thereto, and shall be forever binding and conclusive upon and against all persons and corporations, whether mentioned by name in the order of publication, or included under the general description, "to whom it may concern"; and every such decree so rendered, or a duly certified copy thereof, as also the certificate of title issued thereon to the person or corporation therein

of the land therein described, and no other evidence shall be required in any court of this State of his or its right or title thereto. It shall not be an exception to such conclusiveness that the person is an infant, lunatic or is under any disability, but such person may have recourse upon the indemnity fund hereinafter provided for, for any loss he may suffer by reason of being so concluded. Notwithstanding the provisions of G.S. 43-10, such decrees shall not be binding on and include the State of North Carolina or any of its agencies unless the State of North Carolina is made a party to the proceeding and notice of said proceeding and copy of petition, etc., are served upon the State of North Carolina as provided in this Chapter. Such decrees shall, in addition to being signed by the clerk of the court, be approved by the judge of the superior court, who shall review the whole proceeding and have power to require any reformation of the process, pleading, decrees or entries. (1913, c. 90, s. 9; 1919, c. 82, s. 3; C.S., s. 2388; 1925, c. 263; 1979, c. 73, s. 2.)

CASE NOTES

Quoted in *State v. Johnson*, 278 N.C. (1976).
126, 179 S.E.2d 371 (1971); *Taylor v. Johnston*, 289 N.C. 690, 224 S.E.2d 567
Cited in *Brinson v. Lacy*, 195 N.C. 394, 142 S.E. 317 (1928).

ARTICLE 4.

Registration and Effect.

§ 43-13. Manner of registration.

The county commissioners of each county shall provide for the register of deeds in the county a book, to be called Registration of Titles, in which the register shall enroll, register and index, as hereinafter provided, the decree of title before mentioned and the copy of the plot contained in the petition, and all subsequent transfers of title, and note all voluntary and involuntary transactions in any wise affecting the title to the land, authorized to be entered thereon. If the title be subject to trust, condition, encumbrance or the like, the words "in trust," "upon condition," "subject to encumbrance," or like appropriate insertion shall indicate the fact and fix any person dealing with such certificate with notice of the particulars of such limitations upon the title as appears upon the registry. No erasure, alteration, or amendment shall be made upon the registry after entry and issuance of a certificate of title except by order of a court of competent jurisdiction. (1913, c. 90, s. 10; 1919, c. 236, s. 1; C.S., s. 2389.)

§ 43-14. Cross-indexing of lands by registers of deeds.

Where any land is brought into the Torrens System and under said System is registered in the public records of the register's office, said register shall cross-index the registration in the general cross index for deeds in his office. (1931, c. 286, s. 2.)

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§ 43-15. Certificate issued.

Upon the registration of such decree the register of deeds shall issue an owner's certificate of title, under the seal of his office, which shall be delivered to the owner or his agent duly authorized, and shall be substantially as follows:

State of North Carolina — County of

The certificate of

I hereby certify that the title is registered in the name of to and situate in said county and State, described as follows: (Here describe land as in decree.)

Estate (here name the estate and any limitation or encumbrance thereon, as fee simple, upon condition, in trust, subject to encumbrance, and the like).

Under decree of the land court of county, entitled

Registered No., Book No., page

Witness my hand and seal, at office at this day of, A.D. 19.....

(Seal) Register of Deeds

(1913, c. 90, s. 10; C.S., s. 2390.)

CASE NOTES

Stated in State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-16. Certificates numbered; entries thereon.

All certificates of title to land in the county shall be numbered consecutively, which number shall be retained as long as the boundaries of the land remain unchanged, and a separate page or more, with appropriate space for subsequent entries, shall be devoted to each title in the registration of titles book for the county. Every entry made upon any certificate of title in such book or upon the owner's certificate, under any of the provisions of this Chapter, shall be signed by the register of deeds and minutely dated in conformity with the dates shown by the entry book. (1913, c. 90, s. 11; C.S., s. 2391.)

CASE NOTES

Stated in State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-17. New certificate issued, if original lost.

Whenever an owner's certificate of title is lost or destroyed, the owner or his personal representative may petition the court for the issuance of a new certificate. Notice of such petition shall be published once a week for four successive weeks, under the direction of the court, in some convenient newspaper, and noted upon the

before it that the certificate has been lost or destroyed the court may direct the issuance of a new certificate, which shall be appropriately designated and take the place of the original, but at least 30 full days shall elapse between the filing of the petition and making the decree for such new certificate. (1913, c. 90, s. 24; C.S., s. 2392.)

CASE NOTES

Cited in *Richmond Cedar Works v. Farmers Mfg. Co.*, 41 N.C. App. 233, 254 S.E.2d 673 (1979).

§ 43-17.1. Issuance of certificate upon death of registered owner; petition and contents; dissolution of corporation; certificate lost or not received by grantee.

Upon the death of any person who is the registered owner of any estate or interest in land which has been brought under this Chapter, a petition may be filed with the clerk of the superior court of the county in which the title to such land is registered by anyone having any estate or interest in the land, or any part thereof, the title to which has been registered under the terms of this Chapter, attaching thereto the registered certificate of title issued to the deceased holder and setting forth the nature and character of the interest or estate of such petitioner in said land, the manner in which such interest or estate was acquired by the petitioner from the deceased person — whether by descent, by will, or otherwise, and setting forth the names and addresses of any and all other persons, firms or corporations which may have any interest or estate therein, or any part thereof, and the names and addresses of all persons known to have any claims or liens against the said land; and setting forth the changes which are necessary to be made in the registered certificate of title to land in order to show the true owner or owners thereof occasioned by the death of the registered owner of said certificate. Such petition shall contain all such other information as is necessary to fully inform the court as to the status of the title and the condition as to all liens and encumbrances against said land existing at the time the petition is filed, and shall contain a prayer for such relief as the petitioner may be entitled to under the provisions hereof. Such petition shall be duly verified.

Like procedure may be followed as herein set forth upon the dissolution of any corporation which is the registered owner of any estate or interest in the land which has been brought under this Chapter.

In the event the registered certificate of title has been lost and after due diligence cannot be found, and this fact is made to appear by allegation in the petition, such registered certificate of title need not be attached to the petition as hereinabove required, but the legal representatives of the deceased registered owner shall be made parties to the proceeding. If such persons are unknown or, if known cannot after due diligence be found within the State, service of summons upon them may be made by publication of the notice prescribed

in G.S. 43-17.2. In case the registered owner is a corporation which has been dissolved, service of summons upon such corporation and any others who may have or claim any interest in such land thereunder shall be made by publication of the notice containing appropriate recitals as required by G.S. 43-17.2.

If any registered owner has by writing conveyed or attempted to convey a title to any registered land without the surrender of the certificate of title issued to him, the person claiming title to said lands under and through said registered owner by reason of his or its conveyance may file a petition with the clerk of the superior court of the county in which the land is registered and in the proceeding under which the title was registered praying for the cancellation of the original certificate and the issuance of the new certificate. Upon the filing of such petition notice shall be published as prescribed in G.S. 43-17.2. The clerk of the superior court with whom said petition is filed shall by order determine what additional notice, if any, shall be given to registered owners. If the registered owner is a natural person, deceased, or a corporation dissolved the court may direct what additional notice, if any, shall be given. The clerk shall hear the evidence, make findings of fact, and if found as a fact that the original certificate of the registered owner has been lost and cannot be found, shall enter his order directing the register of deeds to cancel the same and to issue a new certificate to such person or persons as may be entitled thereto, subject to such claims or liens as the court may find to exist.

Any party within 10 days from the rendition of such judgment or order by the clerk of superior court of the county in which said land is registered may appeal to the superior court during a session of court, where the cause shall be heard de novo by the judge, unless a jury trial be demanded, in which event the issues of fact shall be submitted to a jury. From any order or judgment entered by the superior court during a session of court an appeal may be taken to the appellate division in the manner provided by law. (1943, c. 466, s. 1; 1945, c. 44; 1969, c. 44, s. 49; 1971, c. 1185, s. 2.)

CASE NOTES

Cited in *Richmond Cedar Works v. Farmers Mfg. Co.*, 41 N.C. App. 233, 254 S.E.2d 673 (1979).

§ 43-17.2. Publication of notice; service of process.

Upon the filing of such duly verified petition, the petitioner shall cause to be published once a week for four weeks, in some newspaper having a general circulation in the county in which the land is situated, a notice signed by the clerk of the superior court, setting forth in substance the nature of the petition, a description of the land affected thereby, and the relief therein prayed for, and notifying all persons having or claiming any interest or estate in the land to appear at a time therein specified, which shall be at least 30 days after the first publication of said notice, to show cause, if any exists, why the relief prayed for in the petition should not be granted. An affidavit shall be filed by the publisher with the clerk of the court,

petition, the petitioner shall cause the summons, with a copy of the petition, to be served upon all persons, firms or corporations known to have any interest or estate in the lands referred to in the petition, and the personal representative, the devisees, if any, and all heirs at law of the deceased registered owner of said land. In the event any of the persons upon whom service of summons is to be made are nonresidents of the State of North Carolina, service may be made by publication in the manner prescribed by law for the service of summons in special proceedings. (1943, c. 466, s. 1.)

§ 43-17.3. Answer by person claiming interest.

Any person asserting a claim or any interest in such registered land may, at any time prior to the hearing provided for in G.S. 43-17.4, file such answer or other pleadings as may be proper, asserting his rights or claims to the property referred to in the petition. (1943, c. 466, s. 1.)

§ 43-17.4. Hearing by clerk of superior court; orders and decrees; cancellation of old certificate and issuance of new certificate.

The clerk of the superior court shall hear and determine all matters presented upon the petition and such pleadings as may be filed in this proceeding, and shall make such orders and decrees therein as may be found to be proper from the facts as ascertained and determined by the court. The court is authorized and empowered to order and direct that the outstanding registered certificate of title to the land shall be surrendered and cancelled in the office of the register of deeds, and that a new certificate of title shall be issued, showing therein the owner or owners of the land described in the original certificate and the nature and character of such ownership: Provided, the clerk of the superior court shall not authorize the issuance of the new certificate of title until the fees provided in G.S. 43-49 have been paid. Upon the surrender and cancellation by the register of deeds of the outstanding certificate of title, the new certificate of title shall be registered and cross-indexed in the same manner provided for the registration of the original certificate, and the register of deeds shall issue a new certificate of title in the same manner and form as provided for the original certificate. The said new certificate shall have the same force and effect as the original certificate of title and shall be subject to the same provisions of law with reference thereto. (1943, c. 466, s. 1.)

§ 43-17.5. Issuance of new certificate validated.

Whenever heretofore any registered certificate of title has been surrendered by the heirs or devisees of any deceased registered owner of any registered title and the registered certificate of title of such deceased owner has been surrendered and canceled and a new certificate of title issued to a purchaser or to such heirs or devisees, the same is hereby validated and confirmed and made effectual to the same extent as though such new certificate had been issued in compliance with the provisions of this Chapter. (1943, c. 466, s. 1.)

§ 43-18. Registered owner's estate free from adverse claims; exceptions.

Every registered owner of any estate or interest in land brought under this Chapter shall, except in cases of fraud to which he is a party or in which he is a privy, without valuable consideration paid in good faith, and except when any registration has been procured through forgery, hold the land free from any and all adverse claims; rights or encumbrances not noted on the certificate of title, except

- (1) Liens, claims or rights arising or existing under the laws or Constitution of the United States which the statutes of this State cannot require to appear of record under registry laws;
- (2) Taxes and assessments thereon due the State or any county, city or town therein, but not delinquent;
- (3) Any lease for a term not exceeding three years, under which the land is actually occupied. (1913, c. 90, s. 25; C.S., s. 2393.)

CASE NOTES

This section modifies the common-law rule of *lis pendens*. Its purpose is to stabilize titles by requiring recordation of all deeds, mortgages, or other paper-writings which transfer or encumber the title to land. *Whitehurst v. Abbott*, 225 N.C. 1, 33 S.E.2d 129 (1945).

Unrecorded Deed Does Not Affect Lands Covered by Torrens Title. — Where title to lands was registered under the provisions of the Torrens Law, and the deed seeking to establish a

boundary line and reserve a right-of-way across the lands was not recorded in the registration of titles book, and no notice of the existence thereof was made in said registration of titles book or upon the certificate of title, the deed and purported reservation of right-of-way had no effect whatever on the lands covered by the Torrens title. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-19. Adverse claims existing at initial registry; affidavit; limitation of action.

Any person making any claim to or asserting any lien or charge upon registered land, existing at the initial registry of the same and not shown upon the register or adverse to the title of the registered owner, and for which no other provision is herein made for asserting the same in the registry of titles, may make an affidavit thereof setting forth his interest, right, title, lien or demand, and how and under whom derived, and the character and nature thereof. The affidavit shall state his place of residence and designate a place at which all notices relating thereto may be served. Upon the filing of such affidavit in the office of the clerk of the superior court, the clerk shall order a note thereof as in the case of charges or encumbrances, and the same shall be entered by the register of deeds. Action shall be brought upon such claim within six months after the entry of such note, unless for cause shown the clerk shall extend the time. Upon failure to commence such action within the time prescribed therefor, the clerk shall order a cancellation of such note. If any person shall wantonly or maliciously or without reasonable cause procure such notation to be entered upon the registry of titles, having the effect

damages the owner may suffer thereby. (1913, c. 90, s. 25; C.S., s. 2394.)

§ 43-20. Decree and registration run with the land.

The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and the same shall ever remain registered land, subject to the provisions of this Chapter and all amendments thereof. (1913, c. 90, s. 26; C.S., s. 2395.)

§ 43-21. No right by adverse possession.

No title to nor right or interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession. (1913, c. 90, s. 27; C.S., s. 2396.)

Legal Periodicals. — For article, "Transferring North Carolina Real Estate Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

CASE NOTES

Quoted in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

Cited in *Board of Transp. v. Pelletier*, 38 N.C. App. 533, 248 S.E.2d 413 (1978).

§ 43-22. Jurisdiction of courts; registered land affected only by registration.

Except as otherwise specially provided by this Chapter, registered land and ownership therein shall be subject to the jurisdiction of the courts in the same manner as if it had not been registered; but the registration shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument or record to be registered is duly filed in the office of the register of deeds, subject to the provisions of this Chapter; no voluntary or involuntary transaction shall affect the title to registered lands until registered in accordance with the provisions of this Chapter: Provided, that all mortgages, deeds, surrendered and canceled certificates, when new certificates are issued for the land so deeded, the other paper-writings, if any, pertaining to and affecting the registered estate or estates herein referred to, shall be filed by the register of deeds for reference and information, but the registration of titles book shall be and constitute sole and conclusive legal evidence of title, except in cases of mistake and fraud, which shall be corrected in the methods now provided for the correction of papers authorized to be registered. (1913, c. 90, s. 28; C.S., s. 2397.)

CASE NOTES

No Distinction between Original Parties and Creditors or Purchasers. — The statute draws no distinction between the original parties to deeds or contracts affecting the title of lands registered under its provisions and creditors

or purchasers, and in respect to such registration they stand upon the same footing. *Dillon v. Broeker*, 178 N.C. 65, 100 S.E. 191 (1919).

Unrecorded Deed Does Not Affect Lands Covered by Torrens Title. — Where title to lands was registered under the provisions of the Torrens Law, and deed seeking to establish a boundary line and to reserve a right-of-way across

the lands was not recorded in the registration of titles book, and no notice of the existence thereof was made in said registration of titles book or upon the certificate of title, the deed and purported reservation of right-of-way had no effect whatever on the lands covered by the Torrens title. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-23. Priority of right.

In case of conflicting claims between the registered owners the right, title or estate derived from or held under the older certificate of title shall prevail. (1913, c. 90, s. 29; C.S., s. 2398.)

§ 43-24. Compliance with this Chapter due registration.

When the provisions of this Chapter have been complied with, all conveyances, deeds, contracts to convey or leases shall be considered duly registered, as against creditors and purchasers, in the same manner and as fully as if the same had been registered in the manner heretofore provided by law for the registration of conveyances. (1913, c. 90, s. 32; C.S., s. 2399.)

§ 43-25. Release from registration.

Whenever the record owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this Chapter, desires to have such estate released from the provisions of said Chapter insofar as said Chapter relates to the form of conveyance, so that such estate may ever thereafter be conveyed, either absolutely or upon condition or trust, by the use of any desired form of conveyance other than the certificate of title prescribed by said Chapter, such owner may present his owner's certificate of title to such registered estate to the register of deeds of the county wherein such land lies, with a memorandum or statement written by him on the margin thereof in the words following, or words of similar import, to wit: "I (or we),, being the owner (or owners) of the registered estate evidenced by this certificate of title, do hereby release said estate from the provisions of Chapter 43 of the General Statutes of North Carolina insofar as said Chapter relates to the form of conveyance, so that hereafter the said estate may, and shall be forever until again hereafter registered in accordance with the provisions of said Chapter and acts amendatory thereof, conveyed, either absolutely or upon condition or trust, by any form of conveyance other than the certificate of title prescribed by said Chapter, and in the same manner as if said estate had never been registered." Which said memorandum or statement shall further state that it is made pursuant to the provisions of this section, and shall be signed by such record owner and attested by the register of deeds under his hand and official seal, and a like memorandum or statement so entered, signed and attested upon the margin of the record of the said owner's certificate of title in the registration of titles book in said register's

titles book showing that such entry has been made upon the owner's certificate of title; and thereafter any conveyance of such registered estate, or any part thereof, by such owner, his heirs or assigns, by means of any desired form of conveyance other than such certificate of title shall be as valid and effectual to pass such estate of the owner according to the tenor and purport of such conveyance in the same manner and to the same extent as if such estate had never been so registered. (Ex. Sess. 1924, c. 40.)

Legal Periodicals. — As to the effect of this section, see 3 N.C.L. Rev. 19.

ARTICLE 5.

Adverse Claims and Corrections after Registration.

§ 43-26. Limitations.

No decree of registration heretofore entered, and no certificate of title heretofore issued pursuant thereto, shall be adjudged invalid, revoked, or set aside, unless the action or proceeding in which the validity of such decree of registration or certificate of title issued pursuant thereto is attacked or called in question be commenced or the defense alleging the invalidity thereof be interposed within 12 months from March 10, 1919.

No decree of registration hereafter entered and no certificate of title hereafter issued pursuant thereto shall be adjudged invalid or revoked or set aside, unless the action or proceeding in which the validity of such decree or of the certificate of title issued pursuant thereto is attacked or called in question be commenced or the defense alleging the invalidity thereof be interposed within 12 months from the date of such decree.

No action or proceeding for the recovery of any right, title, interest, or estate in registered land adverse to the title established and adjudicated by any decree of registration heretofore entered shall be maintained unless such action or proceeding be commenced within 12 months from the date last mentioned; and no action or proceeding for the recovery of any right, title, interest, estate in registered land, adverse to the right established by any decree of registration hereafter shall be maintained unless such action or proceeding be commenced within 12 months from the date of such decree.

No action or proceeding for the enforcement or foreclosure of any lien upon or charge against registered land which existed at the date when any decree of registration was heretofore entered, and which was not recognized or established by such decree, shall be maintained, unless such action or proceeding be commenced within 12 months from the date above mentioned; and no action or proceeding for the enforcement or foreclosure of any lien upon or charge against registered land in existence at the date of any decree of registration hereafter entered, and which is not recognized and established by such decree, shall be maintained, unless such action or proceeding be commenced within 12 months from the date of such decree. (1919, c. 236, s. 1; C.S., s. 2400.)

Legal Periodicals. — For survey of 1979 property law, see 58 N.C.L. Rev. 1509 (1980).

CASE NOTES

Conclusive Evidence of Publication. — The recital in a final Torrens' decree of registration that "publication of notice has been duly made" was conclusive evidence of the fact, and any attack on the decree was foreclosed by the limitation imposed in this section. *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).
Cited in *Richmond Cedar Works v. Farmers Mfg. Co.*, 41 N.C. App. 233, 254 S.E.2d 673 (1979).

§ 43-27. Adverse claim subsequent to registry; affidavit of claim prerequisite to enforcement; limitation.

Any person claiming any right, title, or interest in registered land adverse to the registered owner thereof, arising subsequent to the date of the original decree of registration, may, if no other provision is made for registering the same, file with the register of deeds of the county in which such decree was rendered or certificate of title thereon was issued, a verified statement in writing, setting forth fully the right, title, or interest so claimed, how or from whom it was acquired, and a reference to the number, book, and page of the certificate of title of the registered owner, together with a description of the land by metes and bounds, the adverse claimant's place of residence and his post-office address, and, if a nonresident, he shall designate or appoint the said register of deeds to receive all notices directed to or to be served upon such adverse claimant in connection with the claim by him made, and such statement shall be noted and filed by said register of deeds as an adverse claim; but no action or proceeding to enforce such adverse claim shall be maintained unless the same be commenced within six months of the filing of the statement thereof. (1919, c. 236, s. 1; C.S., s. 2401.)

CASE NOTES

Stated in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-28. Suit to enforce adverse claim; summons and notice necessary.

Upon the institution of any action or proceeding to enforce such adverse claim, notice thereof shall be served upon the register of deeds, who shall enter upon the registry a memorandum that suit has been brought or proceeding instituted to determine the validity of such adverse claim; and summons or notice shall be served upon the holder or claimant of the registered title or certificate or other person against whom such adverse claim is alleged, as provided by law for the institution of suits or proceedings in the courts of this State.

If no notice of the institution of an action or proceeding to enforce an adverse claim be served upon the register of deeds and upon the holder of the registered title or certificate, or other person, as aforesaid, within seven months from the date of filing the statement of adverse claim, the register of deeds shall cancel upon the registry the adverse claim so filed and make a memorandum setting out that no notice of suit or proceeding to enforce the same had been served upon him within seven months as herein required, and that such adverse claim was therefore canceled; and thereafter no action or proceeding shall be begun or maintained to enforce such adverse claim in any of the courts of this State. (1919, c. 236, s. 1; C.S., s. 2402.)

CASE NOTES

Stated in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-29. Judgment in suit to enforce adverse claim; register to file.

The court shall certify its judgment to the register of deeds; if such adverse claim be held valid, the register of deeds shall make such entry upon the registry and upon the owner's certificate of title as may be directed by the court, or he may file and record a certified copy of the judgment or order of the court thereon; if such adverse claim be held invalid the register of deeds shall cancel such adverse claim upon the registry, noting thereon that the same was done by order or judgment of the court, or he may file and record a certified copy of the judgment or order of the court thereon. (1919, c. 236, s. 1; C.S., s. 2403.)

§ 43-30. Correction of registered title; limitation of adverse claims.

Any registered owner or other claimant under the registered title may at any time apply to the court in which the original decree was entered, by petition, setting out that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased, or that new interests have arisen or been created which do not appear upon the certificate, or that any error or omission was made in entering or issuing the certificate or any duplicate thereof, or that the name of any person on the certificate has been changed, or that the registered owner had married or, if registered as married, that the marriage has been terminated, or that a corporation which owned registered lands has been dissolved, without conveying the same or transferring its certificate within three years after the dissolution, or any other reasonable and proper ground of correction or relief; and such court may hear and determine the petition after notice to all parties in interest, and may make such order or decree as may be appropriate and lawful in the premises; but nothing in this section shall be construed to authorize any such court to open any original decree of registration which was entered more than 12 months prior to the filing of such petition, and

nothing shall be done or ordered by the court to divest or impair the title or other interest of a purchaser who holds a transfer or certificate of title for value and in good faith. No action or proceeding shall be commenced or maintained to set up or establish any right, claim, interest or estate adverse to the order or decree or certificate of title issued thereon made or entered upon any petition or other proceeding authorized by this section, unless the same shall be brought and instituted within six months from the date of such order or decree authorized by this section. (1919, c. 236, s. 1; C.S., s. 2404.)

ARTICLE 6.

Method of Transfer.

§ 43-31. When whole of land conveyed.

Whenever the whole of any registered estate is transferred or conveyed the same shall be done by a transfer or conveyance upon or attached to the certificate substantially as follows:

A.B. and wife (giving the names of the parties owning land described in the certificate and their wives) hereby, in consideration of dollars, sell and convey to C.D. (giving name of purchaser) the lot or tract of land, as the case may be, described in the certificate of title hereto attached.

The same shall be signed and properly acknowledged by the parties and their wives and shall have the full force and effect of a deed in fee simple: Provided, that if the sale shall be in trust, upon condition, with power to sell or other unusual form of conveyance, the same shall be set out in the deed, and shall be entered upon the registration of titles book as hereinafter provided; that upon presentation of the transfer, together with the certificate of title, to the register of deeds, the transaction shall be duly noted and registered in accordance with the provisions of this Chapter, and certificate of title so presented shall be canceled and a new certificate with the same number issued to the purchaser thereof, which new certificate shall fully refer by number and also by name of holder to former certificate just canceled. (1913, c. 90, s. 12; C.S., s. 2405.)

CASE NOTES

<p>Necessity of Affidavit and Notation. — A contract to convey lands, where the owner has registered it, under the Torrens Law, cannot be specifically enforced until the complainant has filed an affidavit and had notation made on</p>	<p>the books as required by this section. <i>Dillon v. Broeker</i>, 178 N.C. 65, 100 S.E. 191 (1919). Stated in <i>State v. Johnson</i>, 278 N.C. 126, 179 S.E.2d 371 (1971).</p>
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§ 43-32. Conveyance of part of registered land.

The transfer of any part of a registered estate, either of an undivided interest therein or of a separate lot or parcel thereof, shall be made by an instrument of the transfer or conveyance similar in form to that herein provided for the transfer of the whole of any registered estate, to which shall be attached the certificate of title of such registered estate. In case of the transfer of an undivided inter-

shall accurately specify and describe the extent and amount of the interest transferred and of the interest retained, respectively. In case of a transfer of a separate lot or parcel of a registered estate, such instrument of transfer or conveyance shall describe the lot or parcel transferred either by metes and bounds or by reference to the map or plat attached thereto, and shall in every case be accompanied by a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate and of the lot or parcel to be transferred. (1919, c. 82, s. 4; C.S., s. 2406.)

CASE NOTES

Stated in State v. Johnson, 278 N.C.
126, 179 S.E.2d 371 (1971).

§ 43-33. Duty of register of deeds upon part conveyance.

Upon presentation to the register of deeds of an instrument of transfer or conveyance of an undivided interest in a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of title attached thereto and to issue to each owner a new certificate of title, each bearing the same number as the original certificate of title and accurately specifying and describing the extent and the amount of the interest retained or of the interest transferred, as the case may be. Upon presentation to the register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of a registered estate, in proper form as above prescribed, it shall be his duty to cancel the certificate of the title attached thereto and to issue to each owner a new certificate of title bearing a new number and describing the separate lot or parcel retained or transferred, as the case may be, either by metes and bounds or by reference to a map or plat thereto attached. (1919, c. 82, s. 4; C.S., s. 2407.)

CASE NOTES

Stated in State v. Johnson, 278 N.C.
126, 179 S.E.2d 371 (1971).

§ 43-34. Subdivision of registered estate.

Any owner of a registered estate who may desire to subdivide the same may make application in writing to the register of deeds for the issuance of a new certificate of title for each subdivision, to which application shall be attached a map or plat having clearly indicated thereon the boundaries of the whole of the registered estate in question and of each lot or parcel for which he desires a new certificate of title. Thereupon it shall be the duty of the register of deeds, upon payment by such applicant of necessary surveyor's fees, if any are required, and of the amount herein provided for issuing the certificates of title and recording the map, to cancel the certificate of title

attached to said application and to issue to such owner new certificates of title, each bearing a new number, for each lot or parcel shown upon the said map, describing such lot or parcel in such certificates either by metes and bounds or by reference to a map or plat attached thereto. (1919, c. 82, s. 4; C.S., s. 2408.)

§ 43-35. References and cross references entered on register.

In all cases the register of deeds shall place upon the registry of title books and upon the certificate of title of such registered estate therein, references and cross references to the new certificates issued as above provided, in accordance with the provisions of this Article, and the new certificates issued shall fully refer by number and by name of the holder to the canceled certificate in place of which they are issued. (1919, c. 82, s. 4; C.S., s. 2409.)

§ 43-36. When land conveyed as security.

(a) Whole Land Conveyed. — Whenever the owner of any registered estate shall desire to convey same as security for debt, it may be done in the following manner, by a short form of transfer, substantially as follows, to wit:

A.B. and wife (giving names of all owners or holders of certificates and their wives) hereby transfer to C.D. the tract or lot of land described as No. in registration of titles book for County, a certificate for the title for same being hereto attached, to secure a debt of dollars, due to, of County and State, on the day of, 19. . . ., evidenced by bond (or otherwise as the case may be) dated the day of, 19. . . . In case of default in payment of said debt with accrued interest, days notice of sale required.

The same shall be signed and properly acknowledged by the parties making same, and shall be presented, together with the owner's certificate, to the register of deeds, whose duty it shall be to note upon the owner's certificate and upon the certificate of title in the registration of titles book the name of the trustee, the amount of debt, and the date of maturity of same.

(b) Part of Land Conveyed. — When a part of the registered estate shall be so conveyed, the register of deeds shall note upon the book and owner's certificate the part so conveyed, and if the same be required and the proper fee paid by the trustee, shall issue what shall be known as a partial certificate, over his hand and seal, setting out the portion so conveyed.

(c) Effect of Transfer. — All transfers by such short form shall convey the power of sale upon due advertisement at the county courthouse and in some newspaper published in the county, or adjoining county, in the same manner and as fully as is now provided by law in the case of mortgages and deeds of trust and default therein.

(d) Other Encumbrances Noted. — All registered encumbrances, rights or adverse claims affecting the estate represented thereby shall continue to be noted, not only upon the certificate of title in the registration book, but also upon the owner's certificate, until same shall have been released or discharged. And in the event of second or other subsequent voluntary encumbrances the holder of the certifi-

icate may be required to produce such certificate for the entry thereon or attachment thereto of the note of such subsequent charge or encumbrance as provided in this Article.

(e) Other Forms of Conveyance May Be Used. — Nothing in this section nor this Chapter shall be construed to prevent the owner from conveying such land, or any part of the same, as security for a debt by deed of trust or mortgage in any form which may be agreed upon between the parties thereto, and having such deed of trust or mortgage recorded in the office of the register of deeds as other deeds of trust and mortgages are recorded: Provided, that the book and page of the record at which such deed of trust or mortgage is recorded shall be entered by the register of deeds upon the owner's certificate and also on the registration of titles book.

(f) Sale under Lien; New Certification. — Upon foreclosure of such deed of trust or mortgage, or sale under execution for taxes or other lien on the land, the fact of such foreclosure or sale shall be reported by the trustee, mortgagee or other person authorized to make the same, to the register of deeds of the county in which the land lies, and, upon satisfactory evidence thereof, it shall be his duty to call in and cancel the outstanding certificate of title for the land, so sold, and to issue a new certificate in its place to the purchaser or other person entitled thereto; and the production of such outstanding certificate and its surrender by the holder thereof may be compelled, upon notice to him, by motion before and order of the clerk of the superior court in the original proceeding or the clerk of the superior court of the county in which the land lies; but the right of appeal from such order may be exercised and shall be allowed as in other special proceedings, and pending any such appeal the rights of all parties shall be preserved. (1913, c. 90, s. 14; 1915, c. 245; 1919, c. 82, s. 5; C.S., s. 2410.)

§ 43-37. Owner's certificate presented with transfer.

In voluntary transactions the owner's certificate of title must be presented along with the writing or instrument conveying or effecting the sale, and thereupon and not otherwise the register shall be authorized to register the conveyance or other transaction upon proof of payment of all delinquent taxes or liens, if any, or if such payment be not shown the entry and new certificate shall note such taxes or liens as having priority thereto. (1913, c. 90, s. 15; C.S., s. 2411.)

CASE NOTES

Stated in *State v. Johnson*, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 43-38. Transfers probated; partitions; contracts.

All transfers of registered land shall be duly executed and probated as required by law upon like conveyances of other lands, and in all cases of change in boundary by partition, subtraction or addition of land there shall be an accurate survey and permanent

marking of boundaries and accurate plots, showing the courses, distances and markings of every portion thereof, which shall be duly proved and registered as upon the initial registration. Such transfers shall be presented to the register of deeds for entry upon the registration of titles book and upon the owner's certificate within 30 days from the date thereof, or become subject to any rights which may accrue to any other person by a prior registration. All leases or contracts affecting land for a period exceeding three years shall be in writing, duly proved before the clerk of the superior court, recorded in the register's office, and noted upon the registry and upon the owner's certificate. (1913, c. 90, ss. 15, 32; C.S., s. 2412.)

CASE NOTES

A partially executed contract to convey real estate is subject to the statute of frauds. *Holt v. Holt*, 47 N.C. App. 618, 267 S.E.2d 711 (1980), rev'd on other grounds, 304 N.C. 137, 282 S.E.2d 784 (1981).

real estate is not subject to the statute of frauds. *Holt v. Holt*, 47 N.C. App. 618, 267 S.E.2d 711 (1980), rev'd on other grounds, 304 N.C. 137, 282 S.E.2d 784 (1981).

But Not a Fully Executed Contract.

— A fully executed contract to convey

§ 43-39. Certified copy of order of court noted.

In voluntary transactions a certificate from the proper State, county or court officer, or certified copy of the order, decree or judgment of any court of competent jurisdiction shall be authority for him to order a proper notation thereof upon the registration of titles book, and for the register of deeds to note the transaction under the direction of the court. (1913, c. 90, s. 16; C.S., s. 2413.)

CASE NOTES

Applied in *Harrison v. Darden*, 223 N.C. 364, 26 S.E.2d 860 (1943).

§ 43-40. Production of owner's certificate required.

Whenever owner's certificate is not presented to the register along with any writing, instrument or record filed for registration under this Chapter, he shall forthwith send notice by registered mail to the owner of such certificate, requesting him to produce the same in order that a memorial of the transaction may be made thereon; and such production may be required by subpoena duces tecum or by other process of the court, if necessary. (1913, c. 90, s. 17; C.S., s. 2414.)

§ 43-41. Registration notice to all persons.

Every voluntary or involuntary transaction, which if recorded, filed or entered in any clerk's office would affect unregistered land, shall, if duly registered in the office of the proper register as the case may be, and not otherwise, be notice to all persons from the time of

sions of this Chapter, upon any registered land in the county of such registration. (1913, c. 90, s. 18; C.S., s. 2415.)

§ 43-42. Conveyance of registered land in trust.

Whenever a writing, instrument or record is filed for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land, the particulars of the trust, condition, limitation or other equitable interest shall not be entered on the certificate, but it shall be sufficient to enter in the book and upon the certificates a memorial thereof by the terms "in trust" or "upon condition" or in other apt words, and to refer by number to the writing, instrument or record authorizing or creating the same. And if express power is given to sell, encumber or deal with the land in any manner, such power shall be noted upon the certificates by the term "with power to sell" or "with power to encumber," or by other apt words. (1913, c. 90, s. 19; C.S., s. 2416.)

§ 43-43. Authorized transfer of equitable interests registered.

No writing or instrument for the purpose of transferring, encumbering or otherwise dealing with equitable interests in registered land shall be registered unless the power thereto enabling has been expressly conferred by or has been reserved in the writing or instrument creating such equitable instrument, or has been declared to exist by the decree of some court of competent jurisdiction, which decree must also be registered. (1913, c. 90, s. 20; C.S., s. 2417.)

§ 43-44. Validating conveyance by entry on margin of certificate.

In all cases where the owner of any estate in lands, the title to which has been registered or attempted to be registered in accordance with the provisions of this Chapter, has before August 21, 1924, and subsequent to such registration made any conveyance of such estate, or any portion thereof, by any form of conveyance sufficient in law to pass the title thereto if the title to said lands had not been so registered, the record owner and holder of the certificate of title covering such registered estate may enter upon the margin of his certificate of title in the registration of titles book a memorandum showing that such registered estate, or a portion thereof, has been so conveyed, and further showing the name of the grantee or grantees and the number of the book and the page thereof where such conveyance is recorded in the office of the register of deeds, and make a like entry upon the owner's certificate of title held by him, both of such entries to be signed by him and witnessed by the register of deeds, and attested by the seal of office of the register of deeds upon said owner's certificate, with the further notation made and signed by the register of deeds on the margin of the certificate of title in the registration of titles book showing that such entry has been made upon the owner's certificate of title, and thereupon such conveyance shall become and be as valid and effectual to pass such

estate of the owner according to the tenor and purport of such conveyance as if the title to said lands had never been so registered, whether such conveyance be in form absolute or upon condition of trust; and in all cases where such conveyance has been made before August 21, 1924, upon the making of the entries herein authorized by the record owner and holder of such owner's certificate of title, the grantee and his heirs and assigns shall thereafter have the same right to convey the said estate or any part of the same in all respects as if the title to said lands had never been so registered. (Ex. Sess. 1924, c. 41.)

Legal Periodicals. — As to the effect of this section, see 3 N.C.L. Rev. 19.

ARTICLE 7.

Liens upon Registered Lands.

§ 43-45. Docketed judgments.

Whenever any judgment of the superior court of the county in which the registered estate is situated shall be duly docketed in the office of the clerk of the superior court, it shall be the duty of the clerk to certify the same to the register of deeds. The register of deeds shall thereupon enter the certificate of title, the date, and the amount of the judgment, and the same shall be a lien upon such land as fully as such docketed judgment would be a lien upon unregistered lands of the judgment debtor. (1913, c. 90, s. 22; C.S., s. 2418.)

CASE NOTES

Cited in *In re Wallace*, 212 N.C. 490, 193 S.E. 819 (1937).

§ 43-46. Notice of delinquent taxes filed.

It shall be the duty of the sheriff or other collector of taxes or assessments of each county and town, not later than the first day of March in each year, to file an exact memorandum of the delinquency, if any, of any registered land for the nonpayment of the taxes or assessments thereon, including the penalty therefor, in the office of the register of deeds for registration; and if such officer fails to perform such duty, and there shall be subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall acquire a good title free from any lien for such taxes and assessments, and such sheriff or other collector of taxes and his sureties shall be liable for the payment of the taxes and assessments with the penalty and interest thereon. (1913, c. 90, s. 21; C.S., s. 2419.)

§ 43-47. Sale of land for taxes; redemption.

Whenever any sale of registered land is made for delinquent taxes or levies, it shall be the duty of the sheriff or other officer making such sale to file forthwith a memorandum thereof for registration in the office of the register of deeds; and thereupon the registered owner shall be required to produce his certificate for cancellation, and a new owner's certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within 90 days after date of such sale; but a note shall be entered upon the certificate of title and also upon any such new owner's certificate, reserving the privilege of redemption in accordance with the law. In case of any redemption under this section of land sold for taxes, a note of the fact shall be duly registered, and if an owner's certificate has been issued to any purchaser, the same shall be cancelled and a new one shall be issued to the person who has redeemed. (1913, c. 90, ss. 22, 23; C.S., s. 2420.)

§ 43-48. Sale of unredeemed land; application of proceeds.

If there be no redemption of land under the preceding section [G.S. 43-47], in accordance with the law, it shall be the duty of the sheriff or other collector of taxes in the county or town in which the land lies to sell the same at public auction for cash, first giving such notice of the time and place of sale as is prescribed for execution sales, and the proceeds of sale shall be applied, first, to the payment of all taxes and assessments then due to the State, county and town, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars (\$5.00); third, to the payment of a commission to the officer making the sale of five per centum (5%) on the first three hundred dollars (\$300.00) and two per centum (2%) on the residue of the proceeds; fourth, to the satisfaction of any liens other than the taxes and assessments registered against the land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previous to sale for taxes, subject to redemption as provided herein, his heirs, personal representatives or assigns. A note of the sale under this section shall be duly registered, and a certificate shall be entered and an owner's certificate issued in favor of the purchaser in whom title shall be thereby vested as registered owner, in accordance with the provisions of this Chapter. Nothing in this section shall be so construed as to affect or divert the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or assessments thereon. (1913, c. 90, s. 23; C.S., s. 2421.)

ARTICLE 8.

*Assurance Fund.***§ 43-49. Assurance fund provided; investment.**

Upon the original registration of land and also upon the entry of certificate showing the title as registered owners in heirs or devisees, there shall be paid to the clerk of the court one tenth of one percent (0.1%) of the assessed value of the land for taxes, as an assurance fund, which shall be paid over to the State Treasurer, who shall be liable therefor upon his official bond as for other moneys received by him in his official capacity. He shall keep all the principal and interest of such fund invested, except as required for the payment of indemnities, in bonds and securities of the United States, of this State, or of counties and other municipalities within the State. Such investment shall be made upon the advice and concurrence of the Governor and Council of State, and he shall make report of such funds and the investment thereof to the General Assembly biennially. When registration involves the State of North Carolina or any political subdivision thereof, the local tax collector shall assess the value of the land involved as if for tax purposes and the amount to be paid to the clerk shall be an amount equal to one tenth of one percent (0.1%) of such assessed value; provided, however, that no taxes shall be levied upon such land while title thereto remains in the State of North Carolina or any political subdivision thereof. (1913, c. 90, s. 33; C.S., s. 2422; 1963, c. 946, s. 2.)

§ 43-50. Action for indemnity.

Any person who, without negligence on his part, sustains loss or damage or is deprived of land, or of any estate or interest therein, through fraud or negligence or in consequence of any error, omission, mistake, misfeasance, or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who, by the provisions of this Chapter, is barred or in any way precluded from bringing an action for the recovery of such land or interest or estate therein or claim upon same, may bring an action in the superior court of the county in which the land is situate for the recovery of compensation for such loss or damage from the assurance fund. Such action shall be against the State Treasurer and all other persons who may be liable for the fraud, negligence, omission, mistake or misfeasance; but if such claimant has the right of action or other remedy for the recovery of the land, or of the estate or interest therein, or of the claim upon same, he shall exhaust such remedy before resorting to the assurance fund. (1913, c. 90, s. 34; C.S., s. 2423.)

CASE NOTES

Negligence of Mortgagee Barring Recovery. — A proceeding under this chapter, duly commenced prior to the enactment of §§ 1-117 and 1-118, constituted a "lis pendens." Such proceeding,

while pending, was notice to a mortgagee of the land without the necessity of the filing of a formal lis pendens, and where the mortgagee failed to protect himself under the provisions of the statute, and

the title to the land was assured by the State, and a holder thereof by proper transfer acquired the title, the negligence of the mortgagee was a complete

defense in the mortgagee's action to recover damages against the State thereunder. *Brinson v. Lacy*, 195 N.C. 394, 142 S.E. 317 (1928).

§ 43-51. Satisfaction by third person or by Treasurer.

If there are defendants other than the State Treasurer, and judgment is rendered in favor of the plaintiff and against the Treasurer and some or all of the other defendants, execution shall first be issued against the other defendants, and if such execution is returned unsatisfied in whole or in part, and the officer returning the same shall certify that it cannot be collected from the property and effects of the other defendants, or if the judgment be against the Treasurer only, the clerk of the court shall certify the amount due on the execution to the State Auditor, who shall issue his warrant therefor upon the State Treasurer, and the same shall be paid. In all such cases the Treasurer may employ counsel who shall receive reasonable compensation for his services from the assurance fund. (1913, c. 90, s. 35; C.S., s. 2424.)

§ 43-52. Payment by Treasurer, if assurance fund insufficient.

If the assurance fund shall be insufficient at any time to meet the amount called for by any such certificate, the Treasurer shall pay the same from any funds in the treasury not otherwise appropriated; and in such case any amount thereafter received by the Treasurer on account of the assurance fund shall be transferred to the general funds of the treasury until the amount advanced shall have been paid. (1913, c. 90, s. 36; C.S., s. 2425.)

§ 43-53. Treasurer subrogated to right of claimant.

In every case of payment by the Treasurer from the assurance funds under the provisions of this Chapter the Treasurer shall be subrogated to all the rights of the plaintiff against all and every other person or property or securities to a trustee, or by the improper exercise of any power of sale in benefit of the assurance fund. (1913, c. 90, s. 37; C.S., s. 2426.)

§ 43-54. Assurance fund not liable for breach of trust; limit of recovery.

The assurance fund shall not be liable to pay any loss, damage or deprivation occasioned by a breach of trust, whether expressed, constructive or implied, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage or deed of trust. Nor shall any plaintiff recover as compensation under the provisions of this Chapter more than the fair market value of the land at the time when he suffered the loss, damage or deprivation thereof. (1913, c. 90, s. 38; C.S., s. 2427.)

§ 43-55. Statute of limitation as to assurance fund.

Action for compensation from the assurance fund shall be begun within three years from the time the cause of action accrued. In cases of infancy or other disability now recognized by law, persons under such disability shall have one year after the removal of such disability within which to begin the action. (1913, c. 90, s. 39; C.S., s. 2428.)

ARTICLE 9.*Removal of Land from Operation of Torrens Law.***§ 43-56. Proceedings.**

Any land brought under the provisions and operation of this Chapter before April 16, 1931, may be removed and excluded therefrom by a motion in writing filed in the original cause wherein said land was brought under the provisions and operation of said Chapter, and upon the filing of a petition therein showing the names of all persons owning an interest in said land and of all lien holders, mortgagees and trustees of record, and the description of said land. Upon the filing of said petition the clerk of the superior court shall issue a citation to all parties interested and named in the petition, and upon the return date of said citation and upon the hearing of said motion, the said clerk of the superior court may enter a decree in said cause removing and excluding said land from the provisions and operation of this Chapter, and transfer and conveyance of said land may be made thereafter as other common-law conveyances. (1931, c. 286, s. 1.)

Legal Periodicals. — For discussion of this section, see 9 N.C.L. Rev. 392.

§ 43-57. Existing liens unaffected.

Nothing in G.S. 43-56 shall be construed to impair or remove any lien or encumbrance existing against said land. (1931, c. 286, s. 3.)

§§ 43-58 to 43-62: Reserved for future codification purposes.

ARTICLE 10.*Instruments Describing Party as Trustee or Agent.***§ 43-63. When instrument describing party as trustee or agent not to operate as notice of limitation upon powers of such party.**

When any instrument affecting title to real estate describes a party as trustee or agent, or otherwise indicates that a party is or may be acting as trustee or agent, but does not indicate any beneficial interest, set forth his powers or specify some other recorded instrument setting forth such powers and the place in the public

the record chain of title to such real estate setting forth such powers, then the description or indication shall not be notice to any person thereafter dealing with the real estate of any limitation upon the powers of the party nor require any inquiry or investigation as to such trust or agency. Such trustee or agent shall be deemed to have full power to convey or otherwise dispose of the real estate; and no person interested under such trust or agency shall be entitled to make any claim against the real estate based upon notice given by such description or indication. This Article shall not prevent claims against the trustee or agent or against property other than the real estate. (1975, c. 181, s. 1.)

§ 43-64. Application of Article; filing notice of claim; application of § 47B-6.

This Article shall apply to instruments recorded before or after May 15, 1975, but shall not bar any claim based on notice given by any instrument if, within one year after May 15, 1975, a written notice of the claim is recorded, identifying the place in the public records where the reference to a fiduciary may be found, stating the powers of such fiduciary, and naming the person who is then the record owner of the real estate affected. Such notice of claim shall be signed and acknowledged by the person executing the same, and may be executed by any person interested under such trust or agency, or by his attorney, agent, guardian, conservator, parent, or any other person acting on his behalf, if for any reason he is unable to act. The notice of claim shall be recorded and indexed under the name of the person declared therein to be the record owner.

Registrations hereunder shall be subject to the provisions and penalties imposed by G.S. 47B-6. (1975, c. 181, ss. 2, 3.)

Chapter 43.

Land Registration.

Article 8.

Assurance Fund.

Sec.

43-51. Satisfaction by third person or by
Treasurer.

ARTICLE 1.

Nature of Proceeding.

§ 43-1. Jurisdiction in superior court.

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislations, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

ARTICLE 3.

Procedure for Registration.

§ 43-12. Effect of decree; approval of judge.

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislations, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

ARTICLE 4.

Registration and Effect.

§ 43-18. Registered owner's estate free from adverse claims; exceptions.

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislations, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

§ 43-21. No right by adverse possession.

Legal Periodicals. — For article, "The Battle to Preserve North Carolina's Estuarine Marshes: The 1985 Legislations, Private Claims to Estuarine Marshes, Denial of Permits to Fill, and the Public Trust," see 64 N.C.L. Rev. 565 (1986).

ARTICLE 8.

*Assurance Fund.***§ 43-51. Satisfaction by third person or by Treasurer.**

If there are defendants other than the State Treasurer, and judgment is rendered in favor of the plaintiff and against the Treasurer and some or all of the other defendants, execution shall first be issued against the other defendants, and if such execution is returned unsatisfied in whole or in part, and the officer returning the same shall certify that it cannot be collected from the property and effects of the other defendants, or if the judgment be against the Treasurer only, the clerk of the court shall certify the amount due on the execution to the State Treasurer, and the same shall be paid. In all such cases the Treasurer may employ counsel who shall receive reasonable compensation for his services from the assurance fund. (1913, c. 90, s. 35; C.S., s. 2424; 1993, c. 257, s. 1.)

1 certificate and new certificates under this Chapter, ~~fifty cents~~
2 ~~(50¢) for each;~~ Chapter shall be that specified in G.S. 161-10
3 for issuing certified copies. The fee for noting the entries or
4 memorandum required and for the entries noting the cancellation
5 of mortgages and all other entries, if any, herein provided ~~for,~~
6 ~~fifty cents (50¢) for each entry.~~ The county or other surveyor
7 ~~employed under the provisions of this Chapter shall not be~~
8 ~~allowed to charge more than forty cents (40¢) per hour for his~~
9 ~~time actually employed in making the survey and the map, except~~
10 ~~by agreement with the petitioner, but he shall be allowed a~~
11 ~~minimum fee of two dollars (\$2.00).~~ for shall be that specified
12 in G.S. 161-10 for recording instruments in general.

13 There shall be no other fees allowed of any nature except as
14 herein provided, and the ~~bond bonds~~ of the ~~register,~~ register
15 and clerk and sheriff shall be liable in case of any mistake,
16 malfeasance, or misfeasance as to the duties imposed upon them by
17 this Chapter in as full a manner as such bond is now liable by
18 law."

19 Section 2. G.S. 43-13 reads as rewritten:

20 "§ 43-13. Manner of registration.

21 (a) The county commissioners of each county shall provide for
22 the register of deeds in the county a book, to be called
23 Registration of Titles, in which the register shall enroll,
24 register and index, as hereinafter provided, the decree of title
25 before mentioned and the copy of the plot contained in the
26 petition, and all subsequent transfers of title, and note all
27 voluntary and involuntary transactions in any wise affecting the
28 title to the land, authorized to be entered thereon, thereon in
29 the real property records and indexes. The certificate of title
30 and the entries for voluntary and involuntary transactions shall
31 be indexed on the grantor index in the name 'Registered estate
32 no.' and on the grantee index in the name of the registered
33 owner. If the title be subject to trust, condition, encumbrance
34 or the like, the words 'in trust,' 'upon condition,' 'subject to
35 encumbrance,' 'life estate,' or like appropriate insertion shall
36 indicate the fact and fix any person dealing with such
37 certificate with notice of the particulars of such limitations
38 upon the title as appears upon the ~~registry-~~ registry, and no new
39 or additional certificate number shall be issued in such
40 circumstances. No erasure, alteration, or amendment shall be
41 made upon the registry after entry and issuance of a certificate
42 of title except by order of a court of competent jurisdiction.

43 (b) When a voluntary or involuntary transaction is entered on
44 a certificate of title, the certificate with the new entry shall

1 be copied and recorded and indexed in the real property records
2 and indexes. The copied certificate shall be indexed on the
3 grantor index in the name 'Registered estate no.' and on the
4 grantee index in the name of the registered owner."

5 Section 3. Chapter 43 of the General Statutes is
6 amended by adding a new section to read:

7 "§ 43-30.1 Correction of registered title by the Register of
8 Deeds upon death of spouse, life tenant, or joint tenant.

9 Upon the death of a life tenant in registered property, the
10 spouse of a registered owner, or a joint tenant with right of
11 survivorship, any surviving claimant under the registered title
12 may apply to the register of deeds for a correction to the
13 certificate of title. Upon receipt of the applicable death
14 certificate, the register of deeds may make appropriate changes,
15 deletions, or corrections to the certificate of title. Any
16 interested party may appeal the register of deeds' changes to the
17 certificate of title under this section by filing with the clerk
18 of superior court a notice of appeal within 30 days of the
19 register of deeds' decision. If not appealed within 30 days, any
20 changes by the register of deeds to the certificate of title
21 pursuant to this section shall become final."

22 Section 4. G.S. 43-31 reads as rewritten:

23 "§ 43-31. When whole of land conveyed.

24 Whenever the whole of any registered estate is transferred or
25 conveyed the same shall be done by a transfer or conveyance ~~upon~~
26 ~~or~~ attached to the certificate substantially as follows:

27 ~~A.B. and wife~~ The owners (giving the names of the parties
28 owning land described in the certificate ~~and their wives~~) hereby,
29 in consideration of dollars, sell and convey to ~~C. Bill~~
30 the purchaser (giving name of purchaser) the lot or tract of
31 land, as the case may be, described in the certificate of title
32 hereto attached. The transfer shall be indexed on the grantor
33 and grantee indexes in the same manner as deeds are indexed.

34 The same shall be signed and properly acknowledged by the
35 parties ~~and their wives~~ and shall have the full force and effect
36 of a deed in fee simple: Provided, that if the sale shall be in
37 trust, upon condition, with power to sell or other unusual form
38 of conveyance, the same shall be set out in the deed, and shall
39 be entered upon the registration of titles book as hereinafter
40 provided; that upon presentation of the transfer, together with
41 the certificate of title, to the register of deeds, the
42 transaction shall be duly noted and registered in accordance with
43 the provisions of this Chapter, and certificate of title so
44 presented shall be canceled and a new certificate with the same

1 number issued to the purchaser thereof, which new certificate
2 shall fully refer by number and also by name of holder to former
3 certificate just canceled."

4 Section 5. G.S. 43-32 reads as rewritten:

5 "§ 43-32. Conveyance of part of registered land.

6 The transfer of any part of a registered estate, either of an
7 undivided interest therein or of a separate lot or parcel
8 thereof, shall be made by an instrument of the transfer or
9 conveyance similar in form to that herein provided for the
10 transfer of the whole of any registered estate, to which shall be
11 attached the certificate of title of such registered estate. In
12 case of the transfer of an undivided interest in a registered
13 estate, such instrument or transfer or conveyance shall
14 accurately specify and describe the extent and amount of the
15 interest transferred and of the interest retained, respectively.
16 In case of a transfer of a separate lot or parcel of a registered
17 estate, such instrument of transfer or conveyance shall describe
18 the lot or parcel transferred either by metes and bounds or by
19 reference to the map or plat attached thereto, and shall in every
20 case be accompanied by a map or plat having clearly indicated
21 thereon the boundaries of the whole of the registered estate and
22 of the lot or parcel to be ~~transferred~~ transferred, but a new
23 survey of the original registered estate shall not be required.
24 The transfer shall be indexed on the grantor and grantee indexes
25 in the same manner as deeds are indexed."

26 Section 6. G.S. 43-33 reads as rewritten:

27 "§ 43-33. Duty of register of deeds upon part conveyance.

28 Upon presentation to the register of deeds of an instrument of
29 transfer or conveyance of an undivided interest in a registered
30 estate, in proper form as above prescribed, it shall be his duty
31 to cancel the certificate of title attached thereto and to issue
32 to each owner a new certificate of title, each bearing the same
33 number as the original certificate of title and accurately
34 specifying and describing the extent and the amount of the
35 interest retained or of the interest transferred, as the case
36 may be. Upon presentation to the register of deeds of an
37 instrument of transfer or conveyance of a separate lot or parcel
38 of a registered estate, in proper form as above prescribed, it
39 shall be his duty to cancel the certificate of the title attached
40 thereto and to issue to each owner a new certificate of title
41 bearing a new number and describing the separate lot or parcel
42 retained or transferred, as the case may be, either by metes and
43 bounds or by reference to a map or plat thereto attached. The
44 register of deeds is responsible for determining that each new

1 certificate of title contains a description of the property
2 transferred or retained but not for verifying the accuracy of any
3 description."

4 Section 7. G.S. 43-45 reads as rewritten:

5 "§ 43-45. Docketed judgments.

6 Whenever any judgment of the superior court of the county in
7 which the registered estate is situated shall be duly docketed in
8 the office of the clerk of the superior court, or any lien or
9 notice of lis pendens is filed in the office of the clerk of the
10 superior court, it shall be the duty of the ~~clerk~~ clerk, upon the
11 request of any interested party, to certify the same to the
12 register of deeds. The register of deeds shall ~~thereupon~~ enter
13 upon the certificate of title, the date, and the amount of the
14 judgment, and the same shall be a lien upon such land as fully as
15 such docketed judgment would be a lien upon unregistered lands of
16 the judgment ~~debtor~~ debtor, and the register of deeds is
17 authorized to recover the certificate of title pursuant to G.S.
18 43-40. The register of deeds shall also enter notice of the
19 judgment, lien, or lis pendens on the record copy of the
20 certificate of title, and the encumbrance is valid against the
21 registered estate from the time it is noted on the record copy."

22 Section 8. G.S. 43-46 reads as rewritten:

23 "§ 43-46. Notice of delinquent taxes filed.

24 It shall be the duty of the ~~sheriff or other collector of taxes~~
25 ~~or assessments of each county and town, tax collector of each~~
26 taxing unit, not later than the first day of March in each year,
27 June 30 following the date the taxes became delinquent, to file
28 an exact memorandum of the delinquency, if any, of any registered
29 land for the nonpayment of the taxes or assessments thereon,
30 including ~~penalty therefor~~ interest, in the office of the
31 register of deeds for registration; and if such officer fails to
32 perform such duty, and there shall be subsequent to such day a
33 transfer of the land as hereinbefore provided, the grantee shall
34 acquire a good title free from any lien for such taxes and
35 assessments, and ~~such sheriff or other the collector of taxes~~
36 and his sureties shall be liable for the payment of the taxes and
37 assessments with the ~~penalty and~~ interest thereon. The register
38 of deeds shall enter the notice of delinquency on the record copy
39 of the certificate of title, and the tax lien shall be valid
40 against the registered estate from the time it is noted on the
41 record copy."

42 Section 9. G.S. 43-47 is repealed.

43 Section 10. G.S. 43-48 reads as rewritten:

1 "§ 43-48. Foreclosure of tax lien. Sale of unredeemed land;
2 application of proceeds.

3 ~~If there be no redemption of land under the preceding section~~
4 ~~[G.S. 43-47], in accordance with the law, it shall be the duty of~~
5 ~~the sheriff or other collector of taxes in the county or town in~~
6 ~~which the land lies to sell the same at public auction for cash,~~
7 ~~first giving such notice of the time and place of sale as is~~
8 ~~prescribed for execution sales, and the proceeds of sale shall be~~
9 ~~applied, first, to the payment of all taxes and assessments then~~
10 ~~due to the State, county and town, with interest, penalty and~~
11 ~~costs; second, to the payment of all sums paid by any person who~~
12 ~~purchased at the former tax sale, with interest and the~~
13 ~~additional sum of five dollars (\$5.00); third, to the payment of~~
14 ~~a commission to the officer making the sale of five per centum~~
15 ~~(5%) on the first three hundred dollars (\$300.00) and two per~~
16 ~~centum (2%) on the residue of the proceeds; fourth, to the~~
17 ~~satisfaction of any liens other than the taxes and assessments~~
18 ~~registered against the land in the order of their priorities;~~
19 ~~fifth, and the surplus, if any, to the person in whose name the~~
20 ~~land was previous to sale for taxes, subject to redemption as~~
21 ~~provided herein, his heirs, personal representatives or assigns.~~
22 The lien for ad valorem taxes may be foreclosed and the property
23 sold pursuant to G.S. 105-375. A note of the sale under this
24 section shall be duly registered, and a certificate shall be
25 entered and an owner's certificate issued in favor of the
26 purchaser in whom title shall be thereby vested as registered
27 owner, in accordance with the provisions of this Chapter. Nothing
28 in this section shall be so construed as to affect or divert the
29 title of a tenant in reversion or remainder to any real estate
30 which has been returned delinquent and sold on account of the
31 default of the tenant for life in paying the taxes or assessments
32 thereon."

33 Section 11. This act becomes effective January 1, 1999.

APPENDIX D

Below is an explanation of draft bill 97-DRW-017, short title "Improve Torrens Law." This draft was approved by the LRC Land Title Registration Committee on March 3, 1998 as its recommendation to the 1998 Regular Session of the General Assembly.

Section 1 of the proposal amends G.S. 43-5, the section that sets fees for examiners under the Torrens law. A Torrens examiner is an attorney appointed by the Clerk of Superior Court to make an independent examination of the title after a petitioner has instituted a proceeding to have a parcel of land registered under the Torrens system. Current law provides that the examiner be paid a minimum of \$5 for property valued at \$5000 or less, and 50 cents for each additional \$1000 of assessed value in the land. Section 1 deletes this archaic fee structure and places compensation of the examiner in the discretion of the Clerk of Court, as with other property related proceedings.

In addition, Section 1:

- amends G.S. 43-5 to require Torrens plats to be recorded as other plats are, with the same fees as provided for other plats in G.S. 161-10;
- deletes an archaic reference to county surveyors and a confusing waivable restriction on fees charged by surveyors of property involved in the Torrens proceeding. With this change, a surveyor's fee in a Torrens action would be a private matter between the petitioner and the surveyor; and
- deletes an obsolete reference to sheriff's bonds. Sheriffs formerly had responsibility for collecting taxes on registered ("Torrenized") land, but that responsibility has long since been repealed.

Section 2 of the proposal would eliminate the requirement that registers of deeds keep a separate book for registered titles, and instead require them to be indexed in the regular grantor-grantee indexes. Any transactions involving these properties would have to be noted by "registered estate no." so they could easily be identified as a "Torrens" property. Section 2 also requires any new transaction noted on the certificate of title to be copied, recorded and indexed at the register of deeds.

Section 3 of the proposal changes the method for correcting certain registered title certificates. Under current G.S. 43-31, corrections to the registered title must be made through a petition to the superior court. New G.S. 43-31.1 would authorize the register of deeds to make the corrections in the case of the death of a registered life tenant, spouse of an owner, or of a joint tenant with right of survivorship. Any change made by the register of deeds under this section could be appealed to superior court.

Section 4 of the proposal updates the language of G.S. 43-31, the section that sets out the proper language to use in a Torrens certificate.

Section 5 of the proposal eliminates the requirement for a survey of the entire original registered tract when a portion of the tract is transferred.

Section 6 of the proposal clarifies that in the case of the transfer of a portion of a Torrenized tract, the register of deeds is responsible for ensuring the new certificate contain a description of the property transferred, but is not responsible for the accuracy of the description.

Section 7 of the proposal would require the clerk of court, upon request, to certify to the register of deeds any judgments, liens and notices of lis pendens. The register of deeds would then be required to note the judgment, lien, or notice of lis pendens on the record copy of the certificate of title. Recording of notice of the judgment, liens, or lis pendens on the record copy would make the encumbrance valid against the registered estate from the time of recordation.

Section 8 of the proposal changes the method for attachment of tax liens on registered property. Under current law, tax liens attach on registered property only if the collector files a notice of tax lien with the register of deeds by March 1 of each year. The proposal would change this date to June 30, and require the register of deeds to note the delinquency on the record copy of the certificate of title. The act of noting the delinquency on the record copy would make the tax line valid from that time forward.

Section 9 of the proposal repeals G.S. 43-47, a unique method for sale of registered property for satisfaction of tax liens. The standard tax lien method is referenced in Section 10.

Section 10 of the proposal eliminates an archaic method for sale and distribution of proceeds of the foreclosure of registered property for taxes or other liens, and references the standard tax lien foreclosure statute .

Section 11 provides that the proposed bill would become effective January 1, 1999.

